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January 19, 1995

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WASHINGTON, DC

(TWO BRIEFINGS)

WHEN: January 25 at 9:00 am and 1:30 pm

WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Docket No. FV94–925–1–IFR]

Grapes Grown in a Designated Area of Southeastern California; Expenses for the 1995 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This document authorizes expenditures for the California Desert Grape Administrative Committee (Committee) under Marketing Order (M.O.) No. 925 for the 1995 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer this program.

DATES: Effective beginning January 1, 1995, through December 31, 1995. Comments received by February 21, 1995 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, D.C. 20090–6456. Fax # (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, D.C. 20090–6456, telephone: (202) 690–3670; or Rose Aguayo, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721, telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 925 [7 CFR Part 925] regulating the handling of table grapes grown in a designated area of California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule authorizes expenditures for the 1995 fiscal year, beginning January 1, 1995, through December 31, 1995. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of grapes regulated under the marketing order each season and approximately 90 grape producers in California. Small agricultural producers have been defined by the Small Business Administration [13 CFR § 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of these handlers and producers may be classified as small entities.

The table grape marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable grapes handled from the beginning of such year. Annual budgets of expenses are prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are handlers and producers of California table grapes. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The Committee's budget is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing the anticipated expenses by expected shipments of table grapes. Because that rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the Committee's expected expenses.

The Committee met on October 20, 1994, and unanimously recommended expenses of $54,427 and an assessment rate of $0.005 per lug. However, the reserve fund was in excess of the amount of expenses for one year. Section 925.42 of the order specifies that the reserve fund may not exceed approximately one fiscal year's

expenses. Accordingly, the Department returned the recommendation to the Committee for reconsideration.

The Committee conducted a telephone vote on November 21, 1994, and approved by a majority vote a revised budget with an additional $20,000 for salaries. There were two Committee members who were unavailable to vote. The Committee's recommended revised total expense amount is $74,427, which is $29,117 less in expenses than the previous year.

The Committee also recommended not to have an assessment rate for the 1995 fiscal year. The $2,500 in interest income and $71,927 from the Committee's authorized reserves will adequately cover estimated expenses.

Major expense categories for the 1995 fiscal year include $24,000 for the Western Grape Leaf Skeletonizer project, $12,487 for salaries, $20,000 for salaries of Los Angeles Market inspectors and $4,440 for rent. Funds in the reserve at the end of the 1995 fiscal year are estimated at $93,431.

This action will not impose additional costs on handlers. The Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal year for the Committee begins January 1, 1995, (3) handlers are aware of this action which is similar to budgets issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements and orders, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 925 is amended as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

1. The authority citation for 7 CFR Part 925 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will not appear in the annual Code of Federal Regulations.

2. A new § 925.214 is added to read as follows:

§ 925.214 Expenses.

Expenses of $74,427 by the California Desert Grape Administrative Committee are authorized for the fiscal year ending December 31, 1995. Unexpended funds may be carried over as a reserve.

Dated: January 12, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–1234 Filed 1–18–95; 8:45 am]

BILLING CODE 3410–02–P

Rural Utilities Service

7 CFR Parts 1710, 1712, 1714, 1717, 1719, and 1785

RIN 0572–AA69

Loan Policies and Procedures for Electric Loans

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) hereby amends its regulations for electric loans. Key provisions of this regulation include: Lengthening the allowable construction financing period for most electric loans; clarifying RUS requirements for supplemental financing concurrent with municipal rate loans; substantially modifying the requirement that borrowers develop and maintain certain levels of equity; and clearly setting forth the documents required for a complete loan application. In addition, this regulation eliminates some policies and procedures that have become obsolete. This regulation is intended to simplify loan application procedures for borrowers and reduce administrative costs to the Government.

EFFECTIVE DATE: This rule is effective February 21, 1995.

FOR FURTHER INFORMATION CONTACT: Sue Arnold, Financial Analyst, U.S. Department of Agriculture, Rural Utilities Service, room 2230–s, 14th Street and Independence Avenue, SW., Washington, DC 20250–1500. Telephone: 202–720–0736. FAX 202–742–4120.

SUPPLEMENTARY INFORMATION: This rule has been determined to be not significant for the purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB). The Administrator of RUS has determined that the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this rule. The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment. The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850 Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325. This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts electric loans and loan guarantees made pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) (RE Act), from coverage under this Order. This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) Will not have any retroactive effect; and (3) Will not require administrative proceedings before any parties may file suit challenging the provisions of this rule.

Information Collection and Recordkeeping Requirements

The existing recordkeeping and reporting burdens contained in this rule were approved by OMB pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), under control numbers 0572–0017, 0572–0032, and 0572–0103.

Send questions or comments regarding these burdens or any other aspect of these collections of information, including suggestions for reducing the burden, to the Office of

Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for USDA, room 3201, NEOB, Washington, DC 20503.

Background

On August 5, 1994, at 59 FR 39972, the Rural Electrification Administration (REA) proposed several amendments to pre-loan regulations affecting both insured and guaranteed electric loans pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) (RE Act). These amendments are intended to enhance the delivery of customer service by facilitating the application process for borrowers, and reducing administrative costs to the Government. Key provisions of the proposed rule include lengthening the allowable construction financing period for many electric loans; substantially revising the requirement that borrowers achieve and maintain certain levels of equity; and clearly listing the documents required for a complete loan application.

Since publication of the proposed rule, the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 108 Stat. 3178) (Reorganization Act) has been enacted. The Reorganization Act requires in section 232(a) that the Secretary of Agriculture (Secretary) establish and maintain within the Department of Agriculture the Rural Utilities Service (RUS). Section 232(c)(1)(A) requires that the Secretary carry out through RUS electric loan programs authorized under the RE Act. Secretary's Memorandum 1010–1, Reorganization of the Department of Agriculture, issued October 20, 1994, abolished REA and established RUS. On December 27, 1994, the Department of Agriculture published a notice in the Federal Register at 59 FR 66517 announcing this reorganization. In other words, RUS is the successor to REA with respect to electric loan and loan guarantee programs under the RE Act.

Rules formerly published by REA were reassigned to RUS pursuant to a final rule published in the Federal Register on December 27, 1994, at 59 FR 66438. Therefore, this final rule culminating a rulemaking proceeding initiated by REA is being published by RUS. According to 7 CFR 1710.3 of the rule changing nomenclature, the terms ''RUS bulletin'' and ''RUS form'' have the same meaning as the terms ''REA bulletin'' and ''REA form, '' respectively.

The period for public comments on the REA proposed rule expired October 4, 1994. Twenty-one comments were received from individual borrowers, associations representing borrowers, a lender that provides supplemental financing to electric borrowers, and an engineering consulting firm. In general, comments expressed support for the proposed rule. A number of comments addressed specific provisions.

Loan Period

The first of the amendments in the proposed rule lengthens the allowable loan period to 4 years for both insured and guaranteed loans for the construction of distribution and transmission facilities and for improvements to generation facilities. The loan period, sometimes referred to as the financing period, means the period of time during which the facilities included in a loan application will be constructed. In the past, loans to distribution borrowers were limited to a 2 year loan period, and loans to power supply borrowers to a 3 year period. Some borrowers needed to apply for loans every 2 or 3 years in order to meet their financing needs. RUS believes that allowing a longer loan period will, in the long run, significantly reduce loan application costs to Agency customers, including RUS borrowers and supplemental lenders, as well as loan processing costs to the Government. Borrowers will still have the option of applying for loans for a shorter period, if they so desire, and RUS reserves the right to limit loans to a period of less than 4 years under certain circumstances.

Most commentors supported the changes proposed. Several requested that RUS allow more loan fund advances on a municipal rate loan made for a longer loan period. The proposed rule at 7 CFR 1714.6(a)(2) would allow up to 6 advances from a municipal rate loan if the loan period is 2 years or less, and up to 8 advances if the loan period is longer than 2 years. A limit on the number of loan fund advances from municipal rate loans was first set forth in the rule published December 20, 1993, at 58 FR 66260, that established the municipal rate loan program. As noted in the preamble to this rule at 58 FR 66261, the limit was intended to provide borrowers with financial flexibility, while minimizing the administrative costs to the Government of tracking multiple advances, each bearing its own interest rate, interest rate term, and rollover maturity date. Agency research conducted before publication of the 1993 rule indicated that the vast majority of loans were fully advanced in 6 or fewer advances.

The comment period on the 1993 rule closed on March 21, 1994, and no comments on were received on limiting the number of advances. RUS believes that 8 advances from a municipal rate loan with a 4 year loan period will allow the borrowers sufficient flexibility. Because hardship rate loans and guaranteed loans bear a single interest rate for the entire amount, and there are no interest rate terms or rollover maturity dates associated with these loans, there is no limit on the number of advances.

One commentor, an engineering consulting firm, opposed a 4 year loan period. The commentor questioned RUS' ability to maintain adequate engineering oversight over facilities constructed under a longer construction work plan (CWP). RUS is confident that electric system reliability will not suffer as a result of a longer financing period. RUS reserves in, § 1710.106(f), the right to approve a loan period shorter than the period requested by the borrower if a loan for the longer period would fail to meet RUS requirements for loan feasibility and security.

Fund Advance Period

In conjunction with lengthening the allowable loan period, the rule proposed lengthening the fund advance period, which is the period during which RUS may advance funds to the borrower from an insured loan. Agency policy first promulgated in 1984 provides that the fund advance period terminates automatically 4 years after the date of the loan contract. To allow borrowers to complete construction projects based on a loan period of more than 2 years, the rule proposed, in § 1714.56, that funds from insured loans approved on or after the effective date of the rule may be advanced for a period beginning on the date of the loan note and lasting 1 year longer than the loan period, provided that the fund advance period may not be shorter than 4 years. In other words, if the loan period is 3 years or less, the fund advance period would terminate 4 years after the date of the loan note; if the loan period is 4 years, the fund advance period would terminate 5 years after the date of the note. The Administrator may approve an extension of the fund advance period if the borrower meets the requirements of § 1714.56(c).

Several commentors expressed support for the proposed change. One commentor suggested that the fund advance period be calculated from the date of the first advance, rather than from the date of the loan note. RUS believes, as stated in the preamble to the proposed rule, that, dating the fund advance period from the date of the loan note assists both the borrower and RUS,

by providing a fixed date that is determined as early as possible.

On April 7, 1993, at 58 FR 18043, REA published a proposed amendment to 7 CFR part 1785, where provisions for automatic termination of the insured electric loans were originally published, that would, in effect, redesignate subpart A as 7 CFR 1785 subpart F. Since automatic termination of the fund advance period on insured electric loans is more closely related to the subject matter of part 1714 than of part 1785, RUS has determined that setting out the requirements in detail in part 1714 would better serve the public. Therefore, the rule published today removes subpart A (proposed subpart F) of part 1785.

Supplemental Financing

Another amendment in the proposed rule clarifies policy on supplemental financing requirements. Except in cases of financial hardship, applicants for a municipal rate insured loan are required to obtain a portion of their loan funds from a supplemental source without an RUS guarantee. The method for determining the supplemental financing percentage for each individual loan is set forth in 7 CFR 1710.110(c) (1) and (2). For most borrowers, this percentage is based on the borrower's plant revenue ratio (PRR), as defined in § 1710.2. To clarify the requirement for those borrowers whose PRR changes between the time of the loan application and the time of loan approval, the rule proposed to codify the policy of using the PRR based on the most recent year-end data available on the date of loan approval.

The rule further proposed to clarify policies in cases where termination or rescission of an insured loan, or its associated supplemental loan, substantially affects the overall proportion of RUS and supplemental financing to a borrower. Under longstanding policy, the amount of supplemental financing required on that borrower's next municipal rate loan is adjusted to maintain the overall proportion of RUS to supplemental financing. The rule published today clarifies that the adjustment will only be made following rescission or termination of more than 5 percent of an insured loan subject to supplemental financing. No adjustment will be made based on rescission of a hardship rate loan where no supplemental financing was required. The amendment will also set forth the formula used to compute the adjustment.

Most commentors supported the proposed changes. One commentor suggested an alternative to PRR in determining the amount of supplemental financing required. RUS is analyzing other possible methods of targeting assistance to needy communities. Changes in the methodology for determining the supplemental financing proportions may be proposed at a later date.

Amortization of Principal

In conjunction with lengthening the allowable loan period, the agency proposed that principal amortization on advances made more than 2 years after the date of the note begin with the loan payment billed in the next full month after the month of the advance. For example, principal amortization on funds advanced any time during the month of June of the third year after the date of the note would begin with the bill sent to the borrower in July of that year. In cases of financial hardship, the Administrator may approve a principal deferment period of up to 2 years for any advances made after the second year of the loan.

Most commentors expressed support for the proposed provisions. One commentor believed that provisions concerning amortization are more restrictive than provisions for deferral of principal permitted by section 12 of the RE Act. Section 12 deferrals of principal are permitted for the specific purposes set forth in the RE Act. Regulatory provisions for amortization, on the other hand, apply uniformly to all loans. RUS believes that the provisions in the proposed rule concerning amortization of principal are appropriate.

Final Maturity

Another amendment makes technical changes in the method used to evaluate final maturity of loans. RUS loans must be repaid with interest within a period, up to 35 years, that approximates the expected useful life of the facilities financed. The old rule based expected useful life on the weighted average of the depreciation rates proposed by the borrower. The amendment provides that final maturity will based on the weighted average useful life of the facilities financed, instead of depreciation rates.

One commentor objected to the proposed change, stating that the agency should continue to base final maturity on depreciation rates, and that depreciation rates should be modified to more accurately reflect useful life. RUS agrees that depreciation rates should reflect useful life. However, basing loan maturity directly on useful life is a more straightforward approach that RUS believes will reduce administrative costs for both the borrowers and the Government.

To facilitate the determination of the final maturity, RUS is incorporating into the final rule published today, a provision from a proposed rule published by REA on August 20, 1993, at 58 FR 44288. According to this proposed rule, Long-Range Financial Forecasts of Electric Borrowers, for the purpose of determining final loan maturity, the borrower may either (1) Certify that at least 90 percent of the loan funds are for facilities that have a useful life of 33 years or longer, or (2) Submit a schedule showing the costs and useful life of those facilities with a useful life of less than 33 years. Loan maturity will be based on the weighted average of these useful lives.

Since exact useful life is often difficult to predict, RUS may add up to two years to the composite average useful life in order to compute loan maturity. In other words, if the weighted average useful life of the facilities is 33 years, the final maturity for the loan may be up to 35 years.

The comment period on the 1993 proposed rule, as extended by a notice published September 30, 1993, at 58 FR 48800, closed on October 20, 1993. No commentors objected to the proposed method of approximating the useful life of the facilities financed. Accordingly, the rule published today includes this methodology in paragraph 1710.115(b). To set forth the specific loan application document for the information about useful life, a new paragraph 1710.401(a)(3)(ii) is added requiring that Form 740c, Cost Estimates and Loan Budget for Electric Borrowers, include as a note, either a certification that at least 90 percent of the loan funds are for facilities that have a useful life of 33 years or longer, or a schedule showing the costs and useful life of those facilities with a useful life of less than 33 years. The paragraphs designated in the proposed rule as 1710.401(a)(3)(ii) and (iii) are included in the final rule as 1710.401(a)(3)(iii) and (iv), respectively. Language in paragraph 1710.401(c)(1) of the proposed rule requiring a proposed schedule of the useful life of facilities as part of the Long-range financial forecast is removed from this final rule. A final rule on long-range financial forecasts will be published at a later date.

Equity

The rule proposed replacing the requirement that certain borrowers prepare a formal equity development plan with a more general requirement that the borrower's capitalization is adequate to enable the borrower to meet its financial needs and to provide electric service consistent with the RE Act. Capital structure will be measured

by equity as a percentage of total assets and will be a factor in RUS's evaluation of loan feasibility pursuant to 1710.112, in determining borrower eligibility for advance approval of a lien accommodation pursuant to 7 CFR 1717.854, and in evaluating certain other borrower requests under the mortgage.

Most commentors expressed support for this proposal. One commentor opposed the proposal, arguing that the requirement to prepare and follow an equity development plan better supports borrowers requesting rate increases from state public utility commissions, and better positions borrowers to obtain financing at market rates and replace old plant with new more expensive plant. RUS agrees that reasonable levels of equity are an important component of credit quality. However, as stated in the preamble to the proposed rule, agency experience with equity development plans has demonstrated that such plans are an unnecessary and burdensome means of achieving the desired result.

One commentor requested that those borrowers who have adopted equity development plans as a condition for obtaining an electric loan be permitted to amend these plans pursuant to the new rule. RUS points out that the new rule establishes, in § 1710.112(b)(10), a new loan feasibility criterion addressing the borrower's capitalization. It would not be feasible to revisit each loan that required an equity development plan as a condition of loan approval in the light of the new loan feasibility criterion.

Credit Reform

A policy change mandated by the Federal Credit Reform Act of 1990 (2 U.S.C. 661f), affects loans approved on or after October 1, 1991. The Federal Credit Reform Act requires Federal agencies to match funds obligated, disbursed, and collected with their intended purposes. Therefore, the rule proposed, in § 1710.106(f), that advances of funds from a loan made on or after that date be made only for primary budget purposes included in that particular loan, unless the borrower applies for and RUS approves a budget transfer. Primary budget purposes as listed in RUS Bulletin 26–1, Budgetary Control and Advance of Loan Funds, and on RUS Form 595, Financial Requirement and Expenditure Statement, are (1) Distribution, (2) Transmission, (3) Generation, (4) Headquarters Facilities, (5) Acquisitions, and (6) All Other.

Only one comment addressed this provision. The commentor recognized the requirements of Federal Credit Reform, but hopes that RUS can find a way to be flexible. The rule provides this flexibility by providing that RUS may approve a budget transfer.

Loan Application Documents

Finally, the rule proposed to add new subpart I to part 1710 to set forth a list of the documents and procedures required for a loan application. This list is intended to facilitate the application process for borrowers and supplemental or other lenders. The general requirement to submit each of the documents is set forth in existing part 1710 or in other RUS regulations. The proposed new subpart I is simply a summary list for the convenience of the public. RUS is exploring possibilities for electronic submission of certain documents.

Most commentors expressed support for such a list. Several had specific suggestions for the list. A few commentors suggested a materiality threshold for determining whether the lists of pending actions by third parties and pending regulatory actions (§ 1710.401(a)(1)(iv) and (v), respectively), are required. Another would like a clear definition of a material change to real property (§ 1710.401(a)(7)). RUS believes that the nature of these matters precludes any rule of thumb for determining materiality. This suggestion cannot be accepted.

However, another commentor suggested that the borrower be allowed to combine into a single statement from counsel information on pending litigation and the state regulatory approvals (§§ 1710.401(a)(6) and (15), respectively). RUS has no objection to accepting, in a single statement, information from counsel required by § 1710.401(a)(6), (7), and (15), and clarification has been added to § 1710.401(a)(6).

One commentor requested that the borrower be required to submit the rate disparity and consumer income data needed for certain municipal rate loans subject to the interest rate cap and for some hardship rate loans to RUS prior to submitting the loan application. Language in § 1710.401(a)(8) encourages borrowers to provide this information to the RUS general field representative prior to submitting the application.

One commentor questioned the reference to subpart H of part 1710 in connection with the requirement to submit a Demand Side Management Plan (§ 1710.401(c)(2)(iv)). Subpart H of part 1710, Demand Side Management and Renewable Energy Systems, was published January 4, 1994, at 59 FR 494. Another suggested that RUS establish a threshold level test for determining the need for RUS approval of security offered to a supplemental lender (§ 1710.405(b)). RUS believes that the right to approve collateral offered to a supplemental lender is necessary for RUS to protect its loan security.

One commentor requested that RUS provide the borrower with written grounds if a loan cannot be approved. Such language has been added to § 1710.406(b). See also §§ 1710.401(d)(3) and (4) and .401(e).

Conforming Amendments to RUS Regulations

The rule published today includes conforming amendments to §§ 1710.7(d)(1)(vi), 1717.856(d), and 1717.860(e) to reflect the elimination of the requirement to submit an equity development plan.

Other Regulations

On August 27, 1991, at 56 FR 42461, REA published 7 CFR Parts 1712 and 1719 that established pre- and post-loan policies for 90 percent REA guarantees of certain loans from qualified private lenders. This program was authorized under section 314 of the RE Act. The Rural Electrification Loan Restructuring Act of 1993, Pub. L. 103–129, signed by President Clinton on November 1, 1993, amended section 314 of the RE Act to abolish this 90 percent guarantee program. RUS is, therefore, removing 7 CFR parts 1712 and 1719. Regulations affecting loan guarantees under sections 306, 306A, and 311 of the RE Act will be published at a later date.

Other Issuances

Electric Operations Manual, EOM–1 Guide for the Preparation of Electric Distribution Loan Applications is rescinded effective February 21, 1995.

In addition, this rule consolidates, updates, and, in some instances, revises information contained in the following RUS Bulletins:

20–5 Extensions of Payments of Principal and Interest
20–9 Loan Payments and Statements
26–1 Budgetary Control and Advance of Electric Loan Funds
86–3 Headquarters Facilities for Electric Borrowers

When this regulation and other related rules are effective, these publications will be rescinded, in whole or in part, or revised.

Finally, RUS is rescinding RUS Bulletins 101–3, Business Management for Board Members of Electric Cooperatives, and 103–1, A Practical Approach to Making Policy, effective February 21, 1995. These bulletins were last issued in 1978 and 1959, respectively, and RUS believes the

information they contain is obsolete and unnecessary.

List of Subjects

7 CFR Part 1710

Electric power, Electric utilities, Loan programs—energy, Rural areas.

7 CFR Part 1712

Administrative practice and procedure, Electric power, Electric utilities, Guaranteed program, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1714

Electric power, Loan programs—energy, Rural areas.

7 CFR Part 1717

Administrative practice and procedure, Electric power, Electric utilities, Intergovernmental relations, Investments, Lien accommodation, Lien subordination, Loan programs—energy, Reporting and recordkeeping requirements, Rural development.

7 CFR Part 1719

Administrative practice and procedure, Electric power, Electric utilities, Guaranteed program, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1785

Electric power, Loan programs—energy, Rural areas.

For the reasons set out in the preamble and under the authority of 7 U.S.C. 90 *et seq.*, RUS amends 7 CFR Chapter XVII as follows:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1.The authority citation for part 1710 continues to read as follows:

Authority: 7 U.S.C. 901–950(b); Public Law 99–591, 100 Stat. 3341–16; Public Law 103–354, 108 Stat. 3178.

2. Section 1710.2 is amended by removing the existing definition of ''Loan Period'' and adding two new definitions in alphabetical order to read as follows:

§ 1710.2 Definitions and rules of construction.

(a) * * *

Fund advance period means the period of time during which the Government may advance loan funds to the borrower. See 7 CFR 1714.56.

* * * * *

Loan period means the period of time during which the facilities included in a loan application will be constructed. It commences with the date shown on page 1, in the block headed ''Cost Estimates as of,'' of RUS Form 740c, Cost Estimates and Loan Budget for Electric Borrowers, which is the same as the date on the Financial and Statistical Report submitted with the loan application. The loan period may be up to 4 years for distribution borrowers and, except in the case of a loan for new generating and associated transmission facilities, up to 4 years for the transmission facilities and improvements or replacements of generation facilities for power supply borrowers. The loan period for new generating facilities is determined on a case by case basis.

* * * * *

3. Section 1710.7 is amended by removing and reserving paragraph (d)(1)(vi).

4. Section 1710.106 is amended by redesignating paragraph (d) as paragraph (e) and adding new paragraphs (d) and (f) to read as follows:

§ 1710.106 Uses of loan funds.

* * * * *

(d) A distribution borrower may request a loan period of up to 4 years. Except in the case of loans for new generating and associated transmission facilities, a power supply borrower may request a loan period of not more than 4 years for transmission and substation facilities and improvements or replacements of generation facilities. The loan period for new generating facilities is determined on a case by case basis. The loan period for DSM activities will be determined in accordance with § 1710.355. The Administrator may approve a loan period shorter than the period requested by the borrower, if in the Administrator's sole discretion, a loan made for the longer period would fail to meet RUS requirements for loan feasibility and loan security set forth in §§ 1710.112 and 1710.113, respectively.

* * * * *

(f)(1) For borrowers having one or more loans approved on or after October 1, 1991, advances of funds will be made only for the primary budget purposes included in the loan as shown on RUS Form 740c as amended and approved by RUS, or on a construction work plan or a construction work plan amendment approved by RUS. Each advance will be charged to the oldest outstanding note(s) having unadvanced funds for the primary budget purpose for which the request for advances was made, regardless of whether such notes are associated with loans approved before or after October 1, 1991, unless any conditions on advances under any of these notes have not been met by the borrower.

(2) For borrowers whose most recent loan was approved before October 1, 1991, advances will be made on the oldest outstanding note having unadvanced funds, unless any conditions on advances under such note have not been met by the borrower.

5. Section 1710.110 is amended by revising paragraph (c)(1)(ii) and adding a new paragraph (c)(3) to read as follows:

§ 1710.110 Supplemental financing.

* * * * *

(c) *Supplemental financing required for municipal rate loans*—(1) *Distribution borrowers.*

* * * * *

(ii) All other distribution borrowers must obtain supplemental financing according to their plant revenue ratio (PRR), as defined in § 1710.2, based on the most recent year-end data available on the date of loan approval, as follows:

PRR	Supplemental loan percentage
9.00 and above	10
8.01–8.99	20
8.00 and below	30

* * * * *

(3) *Subsequent loans.* (i) If more than 5 percent of an insured loan made prior to November 1, 1993, or of a municipal rate loan is terminated or rescinded, the amount of supplemental financing required in the borrower's next loan after the rescission for which supplemental financing is required, pursuant to paragraph (a) of this section, will be adjusted to average the actual supplemental financing portion on the terminated or rescinded loan with the supplemental financing portion that would have been required on the new loan according to paragraphs (c)(1) and (2) of this section, in accordance with the formulas set forth in paragraphs (c)(3)(ii) and (iii) of this section.

(ii) If a borrower's supplemental financing requirement as set forth in paragraphs (a), (c)(1), and (c)(2) of this section has not changed between the most recent loan and the loan being considered, then the amount of supplemental financing required for the new loan will be computed as follows:

$$\text{Supplemental financing amount, new loan} = [(A + B) \times C] - D$$

where:

A = The total funds ($) actually advanced from the first loan, including both RUS loan funds and funds from the supplemental loan, plus any unadvanced funds still available to the borrower after the rescission.
B = The total amount ($) for facilities of the new loan request, including both RUS loan funds and funds from supplemental loans.
C = The proportion (%) of supplemental financing required on the loans according to paragraphs (a), (c)(1) and (c)(2) of this section.
D = The amount ($) of supplemental funds actually advanced on the first loan, plus any unadvanced supplemental funds still available to the borrower after the rescission.

(iii) If a borrower's supplemental financing requirement as set forth in paragraphs (a), (c)(1), and (c)(2) of this section has changed between the most recent loan and the loan being considered, then the amount of supplemental financing required for the new loan will be the weighted average of the portions otherwise applicable on the two loans and will be computed as follows:

Supplemental financing amount, new loan = $(A \times C_1)+(B \times C_2) - D$

where:

A = The total funds ($) actually advanced from the first loan, including both RUS loan funds and funds from the supplemental loan, plus any unadvanced funds still available to the borrower after the rescission.
B = The total amount ($) for facilities of the new loan request, including both RUS funds and funds from supplemental loans.
C_1 = The proportion (%) of supplemental financing required on the old loan according to paragraphs (a), (c)(1) and (c)(2) of this section.
C_2 = The proportion (%) of supplemental financing required on the new loan according to paragraphs (a), (c)(1) and (c)(2) of this section.
D = The amount ($) of supplemental funds actually advanced on the first loan, plus any unadvanced supplemental funds still available to the borrower after the rescission.

* * * * *

6. Section 1710.112 is amended by adding a new paragraph (b)(10) to read as follows:

§ 1710.112 Loan feasibility.

* * * * *

(b) * * *

(10) The borrower's projected capitalization, measured by its equity as a percentage of total assets, is adequate to enable the borrower to meet its financial needs and to provide service consistent with the RE Act. Among the factors to be considered in reviewing the borrower's projected capitalization are the economic strength of the borrower's service territory, the inherent cost of providing service to the territory, the disparity in rates between the borrower and neighboring utilities, the intensity of competition faced by the borrower from neighboring utilities and other power sources, and the relative amount of new capital investment required to serve existing or new loads.

7. Section 1710.115 is amended by revising paragraph (b) to read as follows:

§ 1710.115 Final maturity.

* * * * *

(b) Loans made or guaranteed by RUS for facilities owned by the borrower generally must be repaid with interest within a period, up to 35 years, that approximates the expected useful life of the facilities financed. The expected useful life shall be based on the weighted average of the useful lives that the borrower proposes for the facilities financed by the loan, provided that the proposed useful lives are deemed appropriate by RUS. RUS Form 740c, Cost Estimates and Loan Budget for Electric Borrowers, submitted as part of the loan application must include, as a note, either a statement certifying that at least 90 percent of the loan funds are for facilities that have a useful life of 33 years or longer, or a schedule showing the costs and useful life of those facilities with a useful life of less than 33 years. The useful lives proposed by the borrower for the facilities financed must be consistent with the borrower's proposed depreciation rates for these facilities. In states where the borrower must obtain state regulatory authority approval of depreciation rates for rate making purposes, the depreciation rates used for the purposes of this paragraph shall be the rates currently approved by the state authority or rates for which the borrower plans to seek state authority approval, provided that these rates are deemed appropriate by RUS. In other states, if the rates proposed by the borrower are not deemed appropriate by RUS, RUS will base expected useful life on the depreciation rates listed in Bulletin 183–1, or its successor, revising such rates as necessary to reflect current industry practice (for availability of bulletins, see § 1710.5.). Final maturities for loans for the implementation of programs for demand side management and energy resource conservation and on and off grid renewable energy sources not owned by the borrower will be determined by RUS. Due to the uncertainty of predictions over an extended period of time, RUS may add up to 2 years to the composite average useful life of the facilities in order to determine final maturity.

* * * * *

§ 1710.116 [Removed and Reserved]

8. Section 1710.116 is removed and reserved.

9. Section 1710.251 is amended by revising paragraph (b) to read as follows:

§ 1710.251 Construction work plans—distribution borrowers.

* * * * *

(b) A distribution borrower's CWP shall cover a construction period of between 2 and 4 years, and include all facilities to be constructed which are eligible for RUS financing, whether or not RUS financial assistance will be sought or be available for certain facilities. Any RUS financing provided for the facilities will be limited to a 4 year loan period. The construction period covered by a CWP in support of a loan application shall not be shorter than the loan period requested for financing of the facilities.

* * * * *

10. Section 1710.252 is amended by revising paragraph (b) to read as follows:

§ 1710.252 Construction work plans—power supply borrowers.

* * * * *

(b) Normally a power supply borrower's CWP shall cover a period of 3 to 4 years. While comprehensive CWP's are desired, if there are extenuating circumstances RUS may accept a single-purpose transmission or generation CWP in support of a loan application or budget reclassification. The construction period covered by a CWP in support of a loan application shall not be shorter than the loan period requested for financing of the facilities.

* * * * *

11. Subpart I is added to part 1710 to read as follows:

Subpart I—Application Requirements and Procedures for Insured and Guaranteed Loans

Sec.
1710.400 Initial contact.
1710.401 Loan application documents.
1710.402–1710.403 [Reserved]
1710.404 Additional requirements.
1710.405 Supplemental financing documents.
1710.406 Loan approval.
1710.407 Loan documents.

Subpart I—Application Requirements and Procedures for Insured and Guaranteed Loans

§ 1710.400 Initial contact.

(a) Loan applicants that do not have outstanding loans from RUS should write to the Rural Utilities Service Administration, United States Department of Agriculture, Washington, DC 20250–1500. A field or headquarters staff representative may be assigned by RUS to visit the applicant and discuss its financial needs and eligibility. Borrowers that have outstanding loans should contact their assigned RUS general field representative (GFR) or, in the case of a power supply borrower, the Director, Power Supply Division. Borrowers may consult with RUS field representatives and headquarters staff, as necessary.

(b) Before submitting an application for an insured loan the borrower shall ascertain from RUS the amount of supplemental financing required, as set forth in § 1710.110. If the borrower is applying for either a municipal rate loan subject to the interest rate cap or a hardship rate loan, the application must provide a preliminary breakdown of residential consumers either by county or by census tract. Final data must be included with the application. See § 1710.401(a)(8).

§ 1710.401 Loan application documents.

(a) *All borrowers.* All applications for electric loans shall include the documents listed in this paragraph. The first page of the application shall be a list of the documents included in the application. The borrower may use RUS Form 726, Checklist for Electric Loan Application, or a computer generated equivalent as this list.

(1) Transmittal letter. A letter signed by the borrower's manager indicating the actual corporate name and taxpayer identification number of the borrower and addressing the following items:

(i) The need for flood hazard insurance;

(ii) Breakdown of requested loan funds by state;

(iii) A listing of the counties served by the borrower;

(iv) A listing of threatened actions by third parties that could adversely affect the borrower's financial condition, including annexations or other actions affecting service territory, loads, or rates; and

(v) A listing of pending regulatory proceedings pertaining to the borrower.

(2) Board resolution. This document is the formal request by the borrower's board of directors for a loan from RUS. The board resolution shall include:

(i) The requested loan amount, loan term, final maturity, and method of amortization (§ 1710.110(b));

(ii) The sources and amounts of any supplemental or other financing;

(iii) Authorization for RUS to release appropriate information to supplemental or other lender(s), and authorization for these lenders to release appropriate information to RUS; and

(iv) For an insured loan, a statement of whether the application is for a municipal rate loan, with or without the interest rate cap, or a hardship loan. If the application is for a municipal rate loan, the board resolution must indicate whether the borrower intends to elect the prepayment option. See 7 CFR 1714.4(c).

(3) RUS Form 740c, Cost Estimates and Loan Budget for Electric Borrowers. This form together with its attachments lists the construction, equipment, facilities and other cost estimates from the construction work plan or engineering and cost studies, and the sources of financing for each component. The date on page 1 of the form is the beginning date of the loan period and shall be the same as the date on the Financial and Statistical Report submitted with the application (paragraph (a)(5) of this section). Form 740c also includes the following information, exhibits, and attachments:

(i) *Description of funds and materials.* This description details the availability of materials and equipment, any unadvanced funds from prior loans, and any general funds the borrower designates, to determine the amount of such materials and funds to be applied against the capital requirements estimated for the loan period.

(ii) *Useful life of facilities financed by the loan.* Form 740c must include, as a note, either a statement certifying that at least 90 percent of the loan funds are for facilities that have a useful life of 33 years or longer, or a schedule showing the costs and useful life of those facilities with a useful life of less than 33 years. This statement or schedule will be used to determine the final maturity of the loan. See § 1710.115.

(iii) *Reimbursement schedule.* This schedule lists the date, amount, and identification number of each inventory of work orders and special equipment summary that form the basis for the borrower's request for reimbursement of general funds on the RUS Form 740c. See § 1710.109. If the borrower is not requesting reimbursement, this schedule need not be submitted.

(iv) *Location of consumers.* If the application is for a municipal rate loan subject to the interest rate cap, or for a loan at the hardship rate, and the average number of consumers per mile of the total electric system exceeds 17, Form 740c must include, as a note, a breakdown of funds included in the proposed loan to furnish or improve service to consumers located in an urban area. See 7 CFR 1714.7(c) and 1714.8(d). This breakdown must indicate the method used by the borrower for allocating loan funds between urban and non urban consumers.

(4) RUS Form 740g, Application for Headquarters Facilities. This form lists the individual cost estimates from the construction work plan or other engineering study that support the need for RUS financing for any warehouse and service type facilities included, and funding requested for such facilities shown on RUS Form 740c. If no loan funds are requested for headquarters facilities, Form 740g need not be submitted.

(5) Financial and statistical report. Distribution borrowers shall submit these data on RUS Form 7; power supply borrowers shall use RUS Form 12. The form shall contain the most recent data available, which shall not be more than 60 days old when received by RUS.

(6) Pending litigation statement. A statement from the borrower's counsel listing any pending litigation, including levels of related insurance coverage and the potential effect on the borrower. This statement and the statements from counsel required by paragraphs (a)(7) and (15) of this section may be combined into a single document.

(7) Mortgage information. A new mortgage will be required if this is a borrower's first application for a loan under the RE Act. A restated mortgage, or a mortgage supplement will be required if there has been a material change to the real property owned by the borrower since the most recent RUS loan, loan guarantee, or lien accommodation, if the requested loan would cause the borrower to exceed its previously authorized debt limit, or if RUS otherwise determines it necessary. If there has been no material change to the real property owned by the borrower since the most recent RUS loan or loan guarantee, the borrower must submit an opinion of its counsel to that effect. If a new or restated mortgage or a mortgage supplement is required, the borrower must provide the following:

(i) *Property schedule.* For a new or restated mortgage or for a mortgage supplement, the following information shall be submitted in a form satisfactory to RUS:

(A) A listing of the counties where the borrower's existing electric facilities and new facilities are or will be located;

(B) A listing and description of all real property owned by the borrower; and

(C) An opinion of the borrower's counsel certifying that the property schedule is complete and adequate for inclusion in a security instrument to be executed by the borrower to secure an RUS loan.

(ii) *Maximum debt limit.* For a new mortgage, or if the proposed loan would result in the borrower's existing mortgage debt limit being exceeded, a resolution of the borrower's board of directors, and any other authorizations or certifications required by State law, certifying that a new debt limit has been legally established that is adequate to accommodate existing indebtedness and the proposed new financing, including any concurrent loans.

(8) Rate disparity and consumer income data. If the borrower is applying under the rate disparity and consumer income tests for either a municipal rate loan subject to the interest rate cap or a hardship rate loan, the application must provide a breakdown of residential consumers either by county or by census tract. In addition, if the borrower serves in 2 or more states, the application must include a breakdown of all ultimate consumers by state. This breakdown may be a copy of Form EIA 861 submitted by the Borrower to the Department of Energy or in a similar form. See 7 CFR 1714.7(b) and 1714.8(a). To expedite the processing of loan applications, RUS strongly encourages distribution borrowers to provide this information to the GFR prior to submitting the application.

(9) Standard Form 100—Equal Employment Opportunity Employer Report EEO—1. This form, required by the Department of Labor, sets forth employment data for borrowers with 100 or more employees. A copy of this form, as submitted to the Department of Labor, is to be included in the application for an insured loan if the borrower has more than 100 employees. See § 1710.122.

(10) Form AD–1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions. This statement certifies that the borrower will comply with certain regulations on debarment and suspension required by Executive Order 12549, Debarment and Suspension (3 CFR, 1986 Comp., p. 189). See 7 CFR part 3017 and § 1710.123.

(11) Uniform Relocation Act assurance statement. This assurance, which need not be resubmitted if previously submitted, provides that the borrower shall comply with 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended by the Uniform Relocation Act Amendments of 1987 and 1991. See § 1710.124.

(12) Lobbying. The following information on lobbying is required pursuant to 7 CFR part 3018 and § 1710.125. Borrowers applying for both insured and guaranteed financing should consult RUS before submitting this information.

(i) *Certification regarding lobbying.* This statement certifies that the borrower shall comply with certain requirements with respect to restrictions on lobbying activities.

(ii) *Standard Form LLL—Disclosure of Lobbying Activities.* This disclosure form is required from those borrowers engaged in lobbying activities.

(13) Federal debt delinquency requirements. See 1710.126. The following documents are required:

(i) *Report on Federal debt delinquency.* This report indicates whether or not a borrower is delinquent on any Federal debt.

(ii) *Certification Regarding Federal Government Collection Options.* This statement certifies that a borrower has been informed of the collection options the Federal Government may use to collect delinquent debt. The Federal Government is authorized by law to take any or all of the following actions in the event that a borrower's loan payments become delinquent or the borrower defaults on its loans:

(A) Report the borrower's delinquent account to a credit bureau;

(B) Assess additional interest and penalty charges for the period of time that payment is not made;

(C) Assess charges to cover additional administrative costs incurred by the Government to service the borrower's account;

(D) Offset amounts owed directly or indirectly to the borrower under other Federal programs;

(E) Refer the borrower's debt to the Internal Revenue Service for offset against any amount owed to the borrower as an income tax refund;

(F) Refer the borrower's account to a private collection agency to collect the amount due; and

(G) Refer the borrower's account to the Department of Justice for collection.

(14) Articles of incorporation and bylaws. The following are required if either document has been amended since the last loan application was submitted to RUS, or if this is a borrower's first application for a loan under the RE Act:

(i) The borrower's articles of incorporation currently in effect, as filed with the appropriate state office, setting forth the borrower's corporate purpose; and

(ii) The bylaws currently in effect, as adopted by the borrower's board of directors, setting forth the manner by which the borrower's organization will be governed and regulated.

(15) State regulatory approvals. In states in which regulatory authorities have jurisdiction over the borrower's rates, the borrower must provide satisfactory evidence, pursuant to §§ 1710.105 and 1710.151(f), based on the information available, such as an opinion of counsel or of another qualified source, that the state regulatory authority will not exclude from the borrower's rate base any of the facilities included in the loan request, or otherwise prevent the borrower from charging rates sufficient to repay with interest the debt incurred for the facilities.

(16) Seismic safety certifications. This certification shall be included, if required under 7 CFR part 1792.

(17) Rates. (i) A distribution borrower shall explain any recent or planned changes in retail rates, the status of any pending rate cases before a state regulatory authority, or other pertinent rate information.

(ii) A power supply borrower shall submit a schedule of its wholesale rates currently in effect. Any changes in this schedule are subject to RUS approval.

(18) Additional supporting data. Additional supporting data may be required by RUS depending on the individual application or conditions. Examples of such additional supporting data include information about acquisitions, headquarters facilities, generation or transmission facilities, large power loads or special loads.

(b) *Distribution borrowers.* In addition to the items in paragraph (a) of this section, applications for loans submitted by distribution borrowers shall include the borrower's area coverage and line extension policies. If there have been any amendments to area coverage or line extension policies since the last loan application submitted to RUS, or if this is a borrower's first application for a loan under the RE Act, the borrower shall submit the board of directors' approved policies on area coverage and line extensions. See §§ 1710.103 and 1710.151(a).

(c) *Primary support documents.* In addition to the loan application, consisting of the documents required by paragraphs (a) and (b) of this section, all

borrowers must also provide RUS with the following primary support documents pursuant to § 1710.152:

(1) Along with the loan application, the borrower shall submit to RUS a Long-Range Financial Forecast (LRFF), that meets the requirements of subpart G of this part. The forecast shall include any sensitivity analysis or analysis of alternative scenarios required by subpart G of this part, and shall be accompanied by a certified board resolution adopting, and indicating the board of directors' approval of, the LRFF, and directing management to take whatever steps may be necessary, including the filing for rate increases, to achieve the TIER goals set forth in the LRFF.

(2) Prior to RUS's acceptance of the loan application, the borrower shall submit to RUS and receive approval of:

(i) Power Requirements Study (PRS) that meets the requirements of subpart E of this part, and is accompanied by a certified board resolution adopting, and indicating the board of directors' approval of, the PRS.

(ii) Construction Work Plan (CWP) and/or related engineering and cost studies that meets the requirements of subpart F of this part, and is accompanied by a certified board resolution adopting, and indicating the board of directors' approval of, the CWP and/or engineering and cost studies.

(iii) Borrower's Environmental Report (BER), or other environmental information as required by 7 CFR part 1794.

(iv) Demand Side Management Plan and/or Integrated Resource Plan, if required by subpart H of this part.

(d) *Submission of documents.* (1) Generally, all information required by paragraphs (a), (b), and (c)(1) of this section is submitted to RUS in a single application package. The information required by paragraph (c)(2) of this section is generally submitted to, and approved by RUS before the application is submitted.

(2) To facilitate loan review, RUS urges borrowers to ensure that their applications contain all of the information required by this section before submitting the application to RUS. Borrowers may consult with RUS field representatives and headquarters staff as necessary for assistance in preparing loan applications.

(3) RUS may, in its discretion, return an application to the borrower if the application is not materially complete to the satisfaction of RUS within 10 months of receipt of any of the items listed in paragraph (a) or (b) of this section. RUS will generally advise the borrower in writing at least 2 months prior to returning the application as to the elements of the application that are not complete.

(4) If an application is returned, an application for the same loan purposes will be accepted by RUS if satisfactory evidence is provided that all of the information required by this section will be submitted to RUS within a reasonable time. An application for loan purposes included in an application previously returned to the borrower will be treated as an entirely new application.

(e) *Complete applications.* An application is complete when all information required by RUS to approve a loan is materially complete in form and substance satisfactory to RUS.

(f) *Change in borrower circumstances.* A borrower shall, after submitting a loan application, promptly notify RUS of any changes in its circumstances that materially affect the information contained in the loan application or in the primary support documents.

(g) *Interest rate category.* For pending loans, RUS will promptly notify the borrower if its eligibility for an interest rate category changes pursuant to new information from the Department of Energy or the Bureau of the Census. See 7 CFR part 1714.

(Approved by the Office of Management and Budget under control numbers 0572–0017, 0572–0032 and 0572–1013.)

§§ 1710.402–1710.403 [Reserved]

§ 1710.404 Additional requirements.

Additional requirements for insured electric loans are set forth in 7 CFR part 1714.

§ 1710.405 Supplemental financing documents.

(a) The borrower is responsible for ensuring that the loan documents required for supplemental financing pursuant to § 1710.110 are executed in a timely fashion. These documents are subject to RUS approval.

(b) Security. Any security offered by the borrower to a supplemental lender is subject to RUS approval.

§ 1710.406 Loan approval.

(a) A loan is approved when the Administrator signs the administrative findings.

(b) If the loan is not approved, RUS will notify the borrower of the reason.

§ 1710.407 Loan documents.

Following approval of a loan, RUS will forward the loan documents to the borrower for execution, delivery, recording, and filing, as directed by RUS.

PART 1712—[REMOVED]

12. Part 1712 is removed.

PART 1714—PRE-LOAN POLICIES AND PROCEDURES FOR INSURED ELECTRIC LOANS

13. The authority citation for part 1714 continues to read as follows:

Authority: 7 U.S.C. 901–950(b); Pub. L 99–591, 100 Stat. 3341; Pub. L. 103–353, 108 Stat. 3178 (7 U.S.C. 6941 *et seq*).

14. Section 1714.6 is amended by revising paragraph (a)(2) to read as follows:

§ 1714.6 Interest rate term.

(a) * * *

(2) The following limits apply to the number of advances of funds that may be made to the borrower on any municipal rate loan:

(i) If the loan period is 2 years or less, not more than 6 advances;

(ii) If the loan period is more than 2 years, not more than 8 advances.

* * * * *

15. Subpart B is added to part 1714 to read as follows:

Subpart B—Terms of Insured Loans

Sec.

1714.50–1714.54 [Reserved]
1714.55 Advance of funds from insured loans.
1714.56 Fund advance period.
1714.57 Sequence of advances.
1714.58 Amortization of principal.
1714.59 Rescission of loans.

Subpart B—Terms of Insured Loans

§ 1714.50–1714.54 [Reserved]

§ 1714.55 Advance of funds from insured loans.

The borrower shall request advances of funds as needed. Advances are subject to RUS approval and must be requested in writing on RUS Form 595 or an RUS approved equivalent. Funds will not be advanced until the Administrator has received satisfactory evidence that the borrower has met all applicable conditions precedent to the advance of funds, including evidence that the supplemental financing required under 7 CFR part 1710 and any concurrent loan guaranteed by RUS are available to the borrower under terms and conditions satisfactory to RUS.

§ 1714.56 Fund advance period.

(a) For loans approved on or after February 21, 1995, the fund advance period begins on the date of the loan note and is one year longer than the loan period, but not less than 4 years. For example, the fund advance period for a loan with a 2-year loan period

terminates automatically 4 years after the date of the loan note; a loan with a 4-year loan period terminates automatically 5 years after the date of the loan note. The Administrator may extend the fund advance period on any loan if the borrower meets the requirements of paragraph (c) of this section. As defined in 7 CFR 1710.2, the loan period begins on the date shown on page 1 of RUS Form 740c submitted with the loan application.

(b) For loans approved on or after June 1, 1984, and before February 21, 1995, the fund advance period begins on the date of the loan contract, or the most recent amendment thereto, and terminates automatically 4 years from the date of the loan contract, or the most recent amendment thereto, except as provided in paragraph (c) of this section.

(c) The Administrator may agree to an extension of the fund advance period for loans approved on or after June 1, 1984, if the borrower demonstrates to the satisfaction of the Administrator that the loan funds continue to be needed for approved loan purposes (i.e., facilities included in an RUS-approved construction work plan).

(1) To apply for an extension, the borrower must send to RUS, at least 120 days before the automatic termination date, the following:

(i) A certified copy of a board resolution requesting an extension of the Government's obligation to advance loan funds;

(ii) Evidence that the unadvanced loan funds continue to be needed for approved loan purposes; and

(iii) Notice of the estimated date for completion of construction.

(2) In the case of financial hardship, as determined by the Administrator, RUS may agree to an extension of the fund advance period even though the borrower has failed to meet the 120-day requirement of paragraph (c)(1) of this section.

(3) If the Administrator approves a request for an extension, RUS will notify the borrower in writing of the extension and the terms and conditions thereof. An extension will be effective only if it is obtained in writing prior to the automatic termination date.

(d) Advances of funds from loans approved before June 1, 1984, are generally made during the first 6 years of the note.

(e) RUS will rescind the balance of any loan funds not advanced to a borrower as of the final date approved for advancing funds.

§ 1714.57 Sequence of advances.

(a) Except as set forth in paragraph (b) of this section, concurrent loan funds will be advanced in the following order:

(1) 50 percent of the RUS insured loan funds;

(2) 100 percent of the supplemental loan funds;

(3) The remaining amount of the RUS insured loan funds.

(b) At the borrower's request and with RUS approval, all or part of the supplemental loan funds may be advanced before funds in paragraph (a)(1) of this section.

§ 1714.58 Amortization of principal.

(a) For insured loans approved on or after February 21, 1995:

(1) Amortization of funds advanced during the first 2 years after the date of the note shall begin no later than 2 years from the date of the note. Except as set forth in paragraph (a)(2) of this section, amortization of funds advanced 2 years or more after the date of the note shall begin with the scheduled loan payment billed in the month following the month of the advance.

(2) For advances made 2 years or more after the date of the note, the Administrator may authorize deferral of amortization of principal for a period of up to 2 years from the date of the advance if the Administrator determines that failure to authorize such deferral would adversely affect either the Government's financial interest or the achievement of the purposes of the RE Act.

(b) For insured loans approved before February 21, 1995, amortization of principal shall begin 2 years after the date of the note for advances made during the first and second years of the loan, and 4 years after the date of the note for advances made during the third and fourth years.

§ 1714.59 Rescission of loans.

(a) A borrower may request rescission of a loan with respect to any funds unadvanced by submitting a certified copy of a resolution by the borrower's board of directors.

(b) RUS may rescind loans pursuant to 1714.56.

(c) Borrowers who prepay RUS loans at a discounted present value pursuant to 7 CFR part 1786, subpart F, are required to rescind the unadvanced balance of all outstanding electric notes pursuant to 7 CFR 1786.158(j).

PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

16. The authority citation for part 1717 continues to read as follows:

Authority: 7 U.S.C. 901–950b; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq*), unless otherwise noted.

§§ 1717.856 and 1717.860 [Amended]

17. Part 1717 is amended by removing and reserving §§ 1717.856(d) and 1717.860(e).

PART 1719—[REMOVED]

18. Part 1719 is removed.

PART 1785—LOAN ACCOUNT COMPUTATIONS, PROCEDURES AND POLICIES FOR ELECTRIC AND TELEPHONE BORROWERS

19. The authority citation for part 1785 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.;* Title 1, Subtitle D, sec. 1403, Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, 101 Stat. 1330; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq*).

Subpart A [Removed and Reserved]

20. Subpart A of part 1785 is removed and reserved.

Dated: January 9, 1995.

Bob J. Nash,

Under Secretary, Rural Economic and Community Development.

[FR Doc. 95–1051 Filed 1–18–95; 8:45 am]

BILLING CODE 3410–15–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 32

RIN 3150–AF26

Requirement to Report Transfers of Devices to Generally Licensed Persons

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations governing the reporting of transfers of devices to generally licensed persons. The amendments relieve initial distributors of the devices from their requirement to provide copies of the transfer reports to each appropriate NRC Regional Office. Because the reports are already sent to NRC Headquarters, it is not necessary for each Regional office to receive copies. These amendments would reduce the administrative burden on the initial distributors.

EFFECTIVE DATE: December 31, 1994.

FOR FURTHER INFORMATION CONTACT: John W. Lubinski, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7868.

SUPPLEMENTARY INFORMATION:

Background

Each person licensed to initially transfer devices to persons generally licensed under 10 CFR 31.5 or 31.7 is required, in part, to send a report of all transfers of devices to generally licensed persons to the Director, Office of Nuclear Material Safety and Safeguards (NMSS), with a copy of the report to each appropriate Regional Office. The reports are required to either be submitted on a quarterly basis in accordance with 10 CFR 32.52 or on annual basis in accordance with 10 CFR 32.56. The general licensees are not required to report receipt of the devices. Therefore, the reports from the distributors are the only notification to NRC concerning who is using byproduct material under the general license. The information is required to be submitted so that NRC is aware of the identity of all persons using byproduct material under a general license.

Discussion

NMSS is maintaining a computerized database at NRC Headquarters which contains the information provided in the transfer reports submitted in accordance with 10 CFR 32.52 and 32.56. The database allows the NRC staff to query specific information about the general licensees and the devices they possess and to print standard and custom reports. Information from the database allows the NRC staff to locate information without sifting through each report submitted by the distributors. The information in the database is available to all NRC personnel who request it from the database administrator.

Specific information from the reports required by 10 CFR 32.52 or 32.56 is more useful to NRC Regional staff because it is generated from the computerized database. Therefore, it is not necessary for vendors to provide copies of the reports to the Regional Offices. It is only necessary for the initial distributor to continue to provide the reports to NRC Headquarters through the Director, NMSS.

Changes in the Regulations

Paragraph (a), under 10 CFR 32.52 ''Same: Material transfer reports and records,'' and 10 CFR 32.56 ''Same: Material transfer reports,'' require, in part, that the initial distributors of generally licensed devices provide copies of the reports of transfer to general licensees to each appropriate NRC Regional Office. This regulation is being amended to remove this requirement. The distributors will only be required to submit copies to the Director, NMSS.

These amendments are exempt from the notice and comment requirements of section 553 of the Administrative Procedure Act (APA). The general rulemaking provision of the APA, § 553(b)(A), permits an agency to issue procedural rules without prior notice since such rules do not alter any person's substantive rights. These amendments fall within the exemption provided by the APA because they address the administrative procedures used by the NRC to process reports received pursuant to 10 CFR 32.52 and 32.56 and will not affect the public health and safety.

Waiver of Administrative Procedure Act Requirements

Because these amendments deal with agency practice and procedure, the notice and comment provisions of the APA do not apply pursuant to 5 U.S.C. 553(b)(A). Good cause exists to dispense with the usual 30-day delay in the effective date because the amendments address the administrative procedures used by the NRC to process reports received from licensees. The change provides for a decrease in the number of reports the distributors must submit and will not affect public health and safety.

Compatibility of Agreement State Regulations

10 CFR 32.52 and 32.56 are currently designated Division II matters of compatibility for Agreement State regulations. The revisions addressed in this rule deal solely with a reduction in the administrative burden on those licensees (initial distributors) required to send reports to the NRC for the transfer of devices for use by persons generally licensed under 10 CFR 31.5 or 31.7. The rule does not affect the current compatibility designations and therefore, 10 CFR 32.52 and 32.56 continue to be designated as Division II matters of compatibility.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3)(iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule amends the information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget, approval number 3150–0001.

The public reporting burden will be reduced as a result of this rule change. It is estimated that the average annual reduction in burden to each licensee distributing devices in accordance with 10 CFR 32.52 will be 1.2 hours per year. This represents a reduction in the time needed to copy and mail reports. The average annual reduction in burden to each licensee distributing devices in accordance with 10 CFR 32.56 will be negligible. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for further reducing this burden, to the Information and Records Management Branch (T6F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0001), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The NRC has not prepared a regulatory analysis for this final regulation since the change is only administrative in nature and represents a reduction in burden to all affected licensees.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and, therefore, a bckfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 32

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Part 32.

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

1. The authority citation for 10 CFR Part 32 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 32.52, paragraph (a) is revised to read as follows:

§ 32.52 Same: Material transfer reports and records.

* * * * *

(a) Report to the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, all transfers of such devices to persons for use under the general license in § 31.5 of this chapter. Such reports must identify each general licensee by name and address, and individual by name and/or position who may constitute a point of contact between the Commission and the general licensee, the type of device transferred, and the quantity and type of byproduct material contained in the device. If one or more intermediate persons will temporarily possess the device at the intended place of use prior to its possession by the user, the report must include identification of each intermediate person by name, address, contact, and relationship to the intended user. If no transfers have been made to persons generally licensed under § 31.5 of this chapter during the reporting period, the report must so indicate. The report must cover each calendar quarter and must be filed within 30 days thereafter.

* * * * *

3. Section 32.56 is revised to read as follows:

§ 32.56 Same: Material transfer reports.

Each person licensed under § 32.53 shall file an annual report with the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, which must state the total quantity of tritium or promethium–147 transferred to persons generally licensed under § 31.7 of this chapter. The report must identify each general licensee by name, state the kinds and numbers of luminous devices transferred, and specify the quantity of tritium or promethium–147 in each kind of device. Each report must cover the year ending June 30 and must be filed within thirty (30) days thereafter.

* * * * *

Dated at Rockville, Maryland, this 5th day of January 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 95–1270 Filed 1–18–95; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–235–AD; Amendment 39–9122; AD 94–22–10 R1]

Airworthiness Directives; De Havilland Model DHC–8–100 and DHC–8–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain De Havilland Model DHC–8–100 and DHC–8–300 series airplanes, that currently requires a revision to the Airplane Flight Manual (AFM) to advise flight crew members that certain cockpit indications may reveal faulty anti-collision strobe light units, and to provide procedures for subsequent flight crew and maintenance action. That AD also requires a modification that eliminates the need for the AFM revision. That AD was prompted by reports that the function of the proximity switch electronics unit (PSEU) may be adversely affected during operation of the white anti-collision lights. The actions specified by that AD are intended to ensure correct operation of the PSEU and its associated systems. This amendment revises the applicability of the existing AD to add one model of affected airplanes.

DATES: Effective February 3, 1995.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of December 15, 1994 (59 FR 58765, November 15, 1994).

Comments for inclusion in the Rules Docket must be received on or before March 20, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–235–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from De Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michele Maurer, Aerospace Engineer, Systems and Equipment Branch, ANE–173, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–6427; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: On October 26, 1994, the FAA issued AD 94–22–10, amendment 39–9060 (59 FR 58765, November 15, 1994), which is applicable to certain De Havilland Model DHC–8–100 and –300 series airplanes. That action requires a revision to the FAA-approved Airplane Flight Manual (AFM) to advise the flight crew that certain cockpit indications may reveal faulty anti-collision strobe light units, and to provide procedures for subsequent flight crew and maintenance action. It also requires the installation of a modification that eliminates the need for the AFM revision.

That action was prompted by reports indicating that the electrical power supplies of the white anti-collision lights may develop a fault that produces greater than normal electrical emissions. The cause of this fault has been attributed to a capacitor failure in some ''Grimes'' strobe light systems. This electromagnetic interference can adversely affect the operation of the proximity switch electronics unit (PSEU) and its associated systems. Incorrect operation of the PSEU and its associated systems may interfere with or distract the flight crew in carrying out its regular duties during flight or on the ground, and thus serve to compromise the safe operation of the airplane. The requirements of AD 94–22–10 are intended to ensure the correct operation of the PSEU and its associated systems.

The AFM revision that is required by AD 94–22–01 is intended to advise the flight crew of the fact that the electrical power supplies for the white anti-collision lights may fail and cause various abnormal indications, such as:

1. flashing of the landing gear green locked down advisory lights during cruise;

2. fluctuation of cabin pressurization rate needle during cruise;

3. retraction and extension of roll and ground spoilers during ground operation;

4. loss of nose landing gear steering subsequent to landing; and

5. loss of wheel brakes below 35–40 knots.

The AFM revision advises the flight crew that, if any of these abnormal indications are observed, they must select the ''A/COL light switch—RED,'' and leave the switch in this position for the remainder of the flight.

The flight crew and maintenance procedures that are required by AD 94–22–10 are described in De Havilland Alert Service Bulletin S.B. A8–33–33, dated May 31, 1993. These procedures are intended to detect faulty power supply units. The alert service bulletin also describes procedures for replacement of any faulty ''Grimes'' unit with either a new or serviceable ''Grimes'' unit or a new ''Whelan'' system (Modification 8/1273).

The terminating modification that is required by AD 94–22–10 is described in De Havilland Service Bulletin S/B 8–33–19, ''Revision A'', dated May 31, 1993. This modification (Modification 8/1273) entails replacing the existing anti-collision strobe light system (consisting of anti-collision strobe lights, brackets, and power supplies) at all three locations with a new, improved ''Whelan'' anti-collision strobe light system. (The ''Whelan'' system includes new dual strobes, new brackets, and new power supplies.) This new system is considered more durable than the currently installed anti-collision strobe light system. The ''Whelan'' system also has a back-up strobe light at each position.

Subsequent to the issuance of AD 94–22–10, the FAA identified a typographical error in the applicability of the rule: The applicability statement of the AD listed ''de Havilland Model DHC–8–302'' as a series of airplanes that is subject to the requirements of the rule; however, that model should have been listed as ''de Havilland Model DHC–8–301.'' This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Note: There is no ''Model DHC–8–302'' that is currently type certificated.

The FAA has determined that the unsafe condition addressed by AD 94–22–10 is likely to exist or develop in Model DHC–8–301 series airplanes. Therefore, AD 94–22–10 must be revised to correctly add these airplanes to its applicability, thereby making them subject to its requirements.

There currently are no Model DHC–8–301 series airplanes on the U.S. Register, however. These airplanes are operated currently by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this revision to the existing AD is necessary to ensure that the unsafe condition is addressed in the event that any of these airplanes are imported and placed on the U.S. Register in the future.

Should an affected Model DHC–8–301 series airplane be imported and placed on the U.S. Register in the future, it would require approximately 16 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. Required parts for installation of Modification 8/1273 at all three locations would cost approximately $1,397 per airplane. Based on these figures, the total cost impact of this AD on an operator of a Model DHC–8–301 series airplane would be $2,357 per airplane.

(The current requirements of AD 94–24–01 affect approximately 74 airplanes of U.S. registry. Accomplishment of the currently required actions take approximately 16 work hours per airplane, at an average labor rate of $60 per airplane. Required parts for installation of Modification 8/1273 at all three locations cost approximately $1,397 per airplane. Based on these figures, the total cost impact of the current requirements of this rule on U.S. operators is estimated to be $174,418, or $2,357 per airplane.)

Since this revision action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the Federal Register.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–NM–235–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9060 (59 FR 58765, November 15, 1994), and by adding a new airworthiness directive (AD), amendment 39–9122, to read as follows:

94–22–10 R1 De Havilland: Amendment 39–9122. Docket 94–NM–235–AD. Revises AD 94–22–10, Amendment 39–9060.

Applicability: Model DHC–8–102, –103, –301, and –311 series airplanes, having serial numbers 003 through 214, inclusive; on which Modification 8/1273 (as described in De Havilland Service Bulletin S/B No. 8–33–19, Revision 'A', dated May 31, 1993) has not been accomplished; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure correct operation of the proximity switch electronics unit (PSEU) and its associated systems, accomplish the following:

(a) Within the applicable time specified in paragraph (a)(1) or (a)(2) of this AD, revise the Limitations Section of the FAA–approved Airplane Flight Manual (AFM) to include the following statement. The revision of the AFM may be accomplished by inserting a copy of this AD into the AFM.

''The electrical power supplies for the white anti-collision lights may fail and cause the following abnormalities:

—Flashing of the landing gear green locked down advisory lights during cruise;
—Fluctuation of cabin pressurization rate needle during cruise; and
—Retraction and extension of roll and ground spoilers during ground operation.

The failure may also result in loss of nose landing gear steering subsequent to landing, and loss of wheel brakes below 35–40 knots.

If any of these abnormal indications are observed, select A/COL light switch—RED. Leave the switch in this position for the remainder of the flight.''

(1) For Model DHC–8–102, –103, and –311 series airplanes: Accomplish the revision of the AFM within 30 days after December 15, 1994 (the effective date of AD 94–22–01, amendment 39–9060),

(2) For Model DHC–8–301 series airplanes: Accomplish the revision of the AFM within 30 days after the effective date of this amendment.

(b) If the flight crew reports the occurrence of any of the cockpit indications stated in paragraph (a) of this AD: Prior to the next flight, perform the maintenance procedures to confirm and isolate the faulty power supply unit, in accordance with paragraph III., Part B, Accomplishment Instructions of de Havilland Alert Service Bulletin S.B. A8–33–33, dated May 31, 1993.

(1) If any power supply unit is determined to be faulty, prior to further flight, replace the unit with a new or serviceable ''Grimes'' unit or a new ''Whelen'' system in accordance with the alert service bulletin.

(2) If the specific unit causing the faults cannot be determined, prior to further flight, replace all three units with new or serviceable ''Grimes'' units or a new ''Whelen'' system in accordance with the alert service bulletin. Installation of a new ''Whelen'' system at all three locations constitutes terminating action for the requirements of this AD and, following installation, the AFM revision required by paragraph (a) of this AD may be removed.

(c) Within 6 months after the effective date of this AD, install Modification 8/1273 (which entails replacement of the existing anti-collision strobe lights, brackets, and power supplies with the '' 'Whelen' Anti-Collision Strobe Light System'') at all three locations, in accordance with de Havilland Service Bulletin S/B No. 8–33–19, Revision 'A', dated May 31, 1993. Following installation, the AFM revision required by paragraph (a) of this AD may be removed.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with de Havilland Alert Service Bulletin S.B. A8–33–33, dated May 31, 1993; and de Havilland Service Bulletin S/B No. 8–33–19, Revision 'A', dated May 31, 1993; as applicable. This incorporation by reference was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of December 15, 1994 (59 FR 58765, November 15, 1994). Copies may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on February 3, 1995.

Issued in Renton, Washington, on January 11, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–1127 Filed 1–18–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 94–NM–217–AD; Amendment 39–9108; AD 94–26–13]

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–300, –400, and –500 series airplanes. This action requires modification of the leading edge slat access panel and internal structure at Front Spar Station (FSS) 250.663. This amendment is prompted by reports that fuel leaking from the fuel line at FSS 250.663 flowed through a drain hole in a slat access panel and leaked into the turbine exhaust area. The actions specified in this AD are intended to prevent drainage from such a fuel leak into the turbine exhaust area, which could cause an external fire under the wing.

DATES: Effective on February 3, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 3, 1995.

Comments for inclusion in the Rules Docket must be received on or before March 20, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–217–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of

the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen S. Bray, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2681; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: On March 10, 1994, the FAA issued AD 94–06–11, amendment 39–8858 (59 FR 13444, March 22, 1994), applicable to certain Boeing Model 737–300, –400, and –500 series airplanes. That AD requires modification of the leading edge slat access panel and internal structure at Front Spar Station (FSS) 250.663. That action was prompted by reports that fuel leaking from the fuel line at FSS 250.663 flowed through a drain hole in a slat access panel and leaked into the turbine exhaust area. (The strut drain system installed on these airplanes is designed to divert fuel leakage to a point five feet from the turbine exhaust area.) One of the incidents caused an external fire under the wing. Typically, such a fire could occur on the ground after the engines have been shut down. The resultant fire could spread from the turbine exhaust area to the strut and, subsequently, could ignite fuel within the strut. This condition, if not detected and corrected, could cause an external fire under the wing.

Since issuance of AD 94–06–11, the FAA has determined that the same unsafe condition addressed in that AD may exist on certain additional Model 737–300, –400, and –500 series airplanes; therefore, these additional airplanes also are subject to fuel leakage into the turbine exhaust area, which could cause an external fire under the wing. AD 94–06–11 is applicable only to airplanes having line positions 1001 through 1976 inclusive, 1978 through 2183 inclusive, 2185 through 2186 inclusive, and 2188 through 2193 inclusive. The additional airplanes identified are those having line positions 2184, 2187, 2194 through 2197 inclusive, and 2199. These additional airplanes are operated currently by non-U.S. operators under foreign registry.

The FAA has reviewed and approved Boeing Service Bulletin 737–57–1221, Revision 2, dated November 17, 1994, that describes procedures for modifying the leading edge slat access panel and internal structure at FSS 250.663. Incorporation of this modification entails sealing the drain hole in Slat Access Panels 6307L and 6407R, changing the internal structure of the leading edge panel by creating a drain path to the strut drain system, and sealing the slat access panel and the internal structure of the leading edge panel to keep fuel leakage within the new drain path.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent drainage from a fuel leak into the turbine exhaust area, which could cause an external fire under the wing. This AD requires modification of the leading edge slat access panel and internal structure at FSS 250.663. The actions are required to be accomplished in accordance with the service bulletin described previously. This AD applies only to Model 737–300, –400, and –500 series airplanes having line positions 2184, 2187, 2194 through 2197 inclusive, and 2199.

Note: The FAA's normal policy is that when an AD requires a substantive change, such as a change (expansion) in its applicability, the ''old'' AD is superseded by removing it from the system and a new AD is added. In the case of this AD action, the FAA normally would have proposed superseding AD 94–06–11 to expand its applicability to include the additional affected airplanes. However, in reconsideration of the entire fleet size that would be affected by a supersedure action, and the consequent workload associated with revising maintenance record entries, the FAA has determined that a less burdensome approach is to issue a separate AD applicable only to these additional airplanes. This AD does not supersede AD 94–06–11; airplanes listed in the applicability of AD 94–06–11 are required to continue to comply with the requirements of that AD. This AD is a separate AD action, and is applicable on to Model 737–300, –400, and –500 series airplanes, line positions 2184, 2187, 2194 through 2197 inclusive, and 2199.]

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this rule to clarify this requirement.

None of the Model 737–300, –400, or –500 series airplanes affected by this action is on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 10 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. The cost of required parts is expected to be negligible. Based on these figures, the total cost impact of this AD would be $600 per airplane.

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the Federal Register.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments

submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–NM–217–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–26–13 Boeing: Amendment 39–9108. Docket 94–NM–217–AD.

Applicability: Model 737–300, –400, and –500 series airplanes; line positions 2184, 2187, 2194 through 2197 inclusive, and 2199; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent drainage from a fuel leak into the turbine exhaust area, which could cause an external fire under the wing, accomplish the following:

(a) Within 24 months after the effective date of this AD, modify the leading edge slat access panel and internal structure at Front Spar Station (FSS) 250.663 in accordance with Boeing Service Bulletin 737–57–1221, Revision 2, dated November 17, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Boeing Service Bulletin 737–57–1221, Revision 2, dated November 17, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 3, 1995.

Issued in Renton, Washington, on December 21, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–1362 Filed 1–18–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 93–AWP–19]

Amendment of Class D Airspace; Luke Air Force Base, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Class D airspace at Luke Air Force Base, AZ. The Class D airspace will be amended due to the relocation of the Luke Air Force Base TACAN. This action will realign the Class D airspace for instrument flight rules (IFR) operations.

EFFECTIVE DATE: 0901 UTC, March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Charles Register, System Management Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297–1640.

SUPPLEMENTARY INFORMATION:

History

On March 1, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying Class D airspace at Luke Air Force Base, AZ (58 FR 58311). This action will realign the Class D airspace for instrument flight rules (IFR) operations. The Luke Air Force Base TACAN was relocated from lat. 33°32′06″ N, long. 112°22′59″ W to lat. 33°32′16″ N, long. 112°22′49″ W.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class D airspace is published in Paragraph 5000 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends

Class D airspace at Luke Air Force Base, AZ. This action will realign the extensions to contain instrument flight rules (IFR) operations because the Luke Air Force Base TACAN was relocated.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace safety, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.,O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000—Class D Airspace

* * * * *

AWP AZ D Phoenix, Luke Air Force Base, AZ [Revised]

Phoenix Luke Air Force Base, AZ
(Lat. 33°32′06″ N, long. 112°22′59″ W)
Luke Air Force Base TACAN
(Lat. 33°32′16″ N, long. 112°22′49″ W)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.3-mile radius of Luke Air Force Base and within 1.8 miles each side of the Luke TACAN 016° radial, extending from the 4.3-mile radius to 5.2 miles northeast of the TACAN and within 1.8 miles each side of the Luke TACAN 202° radial, extending from the 4.3-mile radius to 5.6 miles southwest of the Luke TACAN, extending that portion east of a line beginning at

Lat. 33°34′35″ N, long. 112°16′59″ W; to
Lat. 33°33′55″ N, long. 112°16′29″ W; to
Lat. 33°33′08″ N, long. 112°18′00″ W; to
Lat. 33°29′29″ N, long. 112°19′29″ W; to
Lat. 33°29′00″ N, long. 112°19′26″ W, and excluding that airspace within the Phoenix, AZ Class B airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on January 6, 1995.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–1261 Filed 1–18–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 73

[Airspace Docket No. 94–AWP–29]

Change in Using Agency for Restricted Areas R–2309 and R–2312; AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the using agency for Restricted Areas R–2309, Yuma, AZ, and R–2312, Fort Huachuca, AZ, from ''Southwest Air Defense Sector/DOS, March AFB, CA'' to ''Western Air Defense Sector/DOS, McChord AFB, WA.'' This is an administrative change initiated by the U.S. Air Force to reflect its reorganization. There are no changes to the boundaries, designated altitudes, times of designation, or activities conducted within the affected restricted areas.

EFFECTIVE DATE: 0901 UTC, March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Jim Robinson, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 493–4050.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations changes the using agency for Restricted Areas R–2309, Yuma, AZ, and R–2312, Fort Huachuca, AZ, from ''Southwest Air Defense Sector/DOS, March AFB, CA'' to ''Western Air Defense Sector/DOS, McChord AFB, WA.'' This is an administrative change initiated by the U.S. Air Force to reflect its reorganization. There are no changes to the boundaries, designated altitudes, times of designation, or activities conducted within the affected restricted areas. Because this action is a minor technical amendment in which the public is not particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Section 73.23 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8B dated March 9, 1994.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action changes the using agency of the restricted areas. There are no changes to the boundaries, designated altitudes, times of designation, or activities conducted within the affected restricted areas. Accordingly, this action is not subject to environmental assessments and procedures as set forth in FAA Order 1050.1D, ''Policies and Procedures for Considering Environmental Impacts.''

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.23 [Amended]

2. Section 73.23 is amended as follows:

R–2309 Yuma, AZ [Amended]

By removing ''Using agency. U.S. Air Force, Southwest Air Defense Sector/DOS, March AFB, CA.'' and substituting the following: ''Using agency. U.S. Air Force, Western Air Defense Sector/DOS, McChord AFB, WA.''

R–2312 Fort Huachuca, AZ [Amended]

By removing ''Using agency. U.S. Air Force, Southwest Air Defense Sector/DOS, March AFB, CA.'' and substituting the following: ''Using agency. U.S. Air Force, Western Air Defense Sector/DOS, McChord AFB, WA.''

Issued in Washington, DC, on January 10, 1995.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 95–1262 Filed 1–18–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 73

[Airspace Docket No. 94–AWP–27]

Revocation of Restricted Area R–2511; Fort Ord, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Restricted Area R–2511, Fort Ord, CA. Due to the base closure of Fort Ord, the Department of the Army no longer has a requirement for Restricted Area R–2511. To accommodate the clearing and disposal of unexploded ordnance at Fort Ord, a Controlled Firing Area (CFA), has been established.

EFFECTIVE DATE: 0901 UTC, March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Jim Robinson, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 493–4050.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations removes Restricted Area R–2511, Fort Ord, CA. Due to the base closure of Fort Ord, the Department of the Army no longer has a requirement for Restricted Area R–2511. To accommodate the clearing and disposal of unexploded ordnance at Fort Ord, a CFA, has been established. The CFA is completely contained within the Fort Ord military reservation. This action returns formerly restricted airspace to public use. Because this action is a minor technical amendment in which the public is not particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Section 73.25 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8B dated March 9, 1994.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action removes special use airspace. This action is not subject to environmental assessments and procedures in accordance with FAA Order 1050.1D, ''Policies and Procedures for Considering Environmental Impacts'' and the National Environmental Policy Act of 1969 (NEPA).

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.25 [Amended]

2. Section 73.25 is amended as follows:

R–2511 Fort Ord, CA [Removed]

Issued in Washington, DC, on January 10, 1995.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 95–1263 Filed 1–18–95; 8:45 am]

BILLING CODE 4910–13–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 226

Administration of Assistance Awards to U.S. Non-Governmental Organizations

AGENCY: Agency for International Development (USAID).

ACTION: Interim final rule.

SUMMARY: This interim final rule adds a new 22 CFR part 226 which implements Office of Management and Budget (OMB) Circular A–110 establishing uniform administrative requirements for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. In keeping with existing USAID policy, this rule is also being made applicable to commercial organizations.

EFFECTIVE DATE: This rule is effective February 21, 1995. Comments must be submitted before March 20, 1995.

FOR FURTHER INFORMATION CONTACT: Diana Joan Esposito, Office of Procurement, Procurement Policy and Evaluation (M/OP/P), USAID, SA–14 Rm.1600I, 320 21st Street, Washington DC 20523. Telephone 703 875–1529, Fax 703 875–1243.

SUPPLEMENTARY INFORMATION: On August 27, 1992, OMB published a proposed version of Circular A–110 (57 FR 39018). Over 200 comments were received from Federal agencies, non-profit organizations, professional organizations, and others. OMB addressed these comments in the final version of the Circular published November 29, 1993.

The revised Circular was developed by an interagency task force for government-wide use in a common rule format to facilitate regulatory adoption by executive departments and agencies. This interim final rule essentially adopts the Government-wide common rule format and provisions of the Circular with some minor changes to the Circular to add clarity and some agency-specific technical changes.

I. The Circular provides agencies with a certain discretion in implementing its provisions. USAID has exercised this discretion as follows:

USAID has decided to include commercial organizations as recipients and subrecipients covered by this rule and not to include foreign or international organizations. The definitions have been revised to reflect this.

The Circular states in ____.22(c) that advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer. Because USAID frequently issues agency letters of credit for advances, a USAID letter of credit is also referenced in 226.22.

In Section 226.23(b), USAID has determined that unrecovered indirect costs may be included as part of cost sharing without additional approval from USAID.

Section 226.24(d) is amended to reflect USAID's policy determination that commercial organizations may not use the additive formula for program income.

In Section 226.24(f), USAID provides that costs incident to the generation of program income may be deducted from gross income when they are in keeping with the applicable cost principles.

II. 22 CFR Part 226 includes the following additions and changes to A–110 that have been submitted for OMB review and approval as deviations:

Section 226.22(g) is revised to provide that it does not apply to funds earned in foreign currency.

Section 226.22(i) is revised to state that separate depository accounts may be required by the terms of an award where specifically required under USAID's guidance covering endowment funds.

Section 226.22(l) is revised to provide that interest earned shall be remitted to USAID, not HHS, and that USAID may authorize recipients to retain all interest earned in accordance with USAID's statutory authority.

Sections 226.32 and 226.34 are revised to allow for USAID to vest title in an entity other than the recipient (e.g., so that the recipient country government may take title when the award is funded under a bilateral project agreement between USAID and a developing country).

Section 226.44(b) is expanded to provide that certain procurement information be sent to the USAID Office of Small Disadvantaged Business Utilization in accordance with established USAID practice and Section 602 of the Foreign Assistance Act of 1961, as amended.

Section 226.61 is expanded to incorporate USAID's existing authority to suspend or terminate an award where continuation would be in violation of applicable law or otherwise not be in the national interest of the United States.

Subpart G contains additional procurement eligibility requirements based on USAID's statutory and regulatory requirements. The coverage on eligibility of goods and services, local cost financing, air transportation, and ocean shipment is currently reserved.

III. Editorial changes designed to help clarify the provisions for USAID recipients and program/agreement officers include the following:

Section 226.2 adds definitions of ''Agreement Officer'' and ''USAID.''

Section 226.15 includes USAID's existing implementation of the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205).

Subpart E contains additional requirements for awards to commercial (for-profit) organizations.

Subpart F contains coverage of USAID's process for disputes with recipients.

Appendix A contract provisions have been altered to indicate applicability to activities conducted in or outside the United States. Also in Appendix A, the provision on the Byrd Anti-Lobbying Amendment corrects the applicability of the provision which was inadvertently misstated in the Circular. The provision applies to awards exceeding $100,000 rather than awards of $100,000 or more.

Waiver of Proposed Rulemaking

It is the practice of USAID to offer interested parties the opportunity to comment on proposed regulations. However, USAID has determined that further public comment on the common rule portion is unnecessary because the substance of the rule received public comment when published by OMB. Given the mandatory nature of the bulk of the text, USAID has determined that issuance of a Notice of Proposed Rulemaking for the modifications would be impractical, unnecessary and contrary to the public interest since the changes are relatively few and most reflect existing policies and practices. Public comments on USAID-specific implementation of this interim final rule are welcome.

Executive Order 12866

USAID has determined that this is not a significant rule in accordance with E.O. 12866.

Regulatory Flexibility Act

This is a mandatory, Government-wide uniform rule. The limited USAID-specific provisions in the rule have been reviewed in accordance with the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. Chapter 6). USAID has determined that these portions of the rule would not have a significant economic impact on a substantial number of small entities and, therefore, a Regulatory Flexibility Analysis is not required.

The information collection requirements contained in this rule have been previously cleared by OMB.

List of Subjects in 22 CFR Part 226

Accounting, Administrative practice and procedures, Grant programs, Grant administration, Reporting and recordkeeping requirements.

Accordingly, Part 226 of Title 22 of the Code of Federal Regulations is added, consisting of Subparts A through G and Appendix A, to read as follows:

PART 226—ADMINISTRATION OF ASSISTANCE AWARDS TO U.S. NON-GOVERNMENTAL ORGANIZATIONS

Subpart A—General

Sec.

226.1 Purpose and applicability.
226.2 Definitions.
226.3 Effect on other issuances.
226.4 Deviations.
226.5 Subawards.

Subpart B—Pre-Award Requirements

226.10 Purpose.
226.11 Pre-award policies.
226.12 Forms for applying for Federal assistance.
226.13 Debarment and suspension.
226.14 Special award conditions.
226.15 Metric system of measurement.
226.16 Resource Conservation and Recovery Act.
226.17 Certifications and representations.

Subpart C—Post-Award Requirements

Financial and Program Management

226.20 Purpose of financial and program management.
226.21 Standards for financial management systems.
226.22 Payment.
226.23 Cost sharing or matching.
226.24 Program income.
226.25 Revision of budget and program plans.
226.26 Non-Federal audits.
226.27 Allowable costs.
226.28 Period of availability of funds.

Property Standards

226.30 Purpose of property standards.
226.31 Insurance coverage.
226.32 Real property.
226.33 Federally-owned and exempt property.
226.34 Equipment.
226.35 Supplies and other expendable equipment.
226.36 Intangible property.
226.37 Property trust relationship.

Procurement Standards

226.40 Purpose of procurement standards.
226.41 Recipient responsibilities.
226.42 Codes of conduct.
226.43 Competition.
226.44 Procurement procedures.
226.45 Cost and price analysis.
226.46 Procurement records.
226.47 Contract administration.
226.48 Contract provisions.
226.49 USAID-Specific procurement requirements.

Reports and Records

226.50 Purpose of reports and records.
226.51 Monitoring and reporting program performance.
226.52 Financial reporting.
226.53 Retention and access requirements for records.

Suspension, Termination and Enforcement

226.60 Purpose of suspension, termination and enforcement.
226.61 Suspension and termination.
226.62 Enforcement.

Subpart D—After-the-Award Requirements

226.70 Purpose.
226.71 Closeout procedures.
226.72 Subsequent adjustments and continuing responsibilities.
226.73 Collection of amounts due.

Subpart E—Special Provisions for Awards to Commercial Organizations

226.80 Scope of subpart.
226.81 Prohibition against profit.
226.82 Program income.

Subpart F—Miscellaneous

226.90 Disputes.

Subpart G—USAID-Specific Requirements

226.1001 Eligibility rules for goods and services. [Reserved]
226.1002 Local cost financing. [Reserved]
226.1003 Air transportation. [Reserved]
226.1004 Ocean shipment of goods. [Reserved]

Appendix A to Part 226—Contract Provisions

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart A—General

§ 226.1 Purpose and applicability.

Except as otherwise authorized by statute, this part establishes uniform administrative requirements for grants and cooperative agreements awarded by USAID to U.S. institutions of higher education, hospitals, and other non-profit organizations, and to U.S. commercial organizations; and to subawards thereunder. USAID shall not impose additional or inconsistent requirements, except as provided in Sections 226.4, and 226.14, or unless specifically required by Federal statute or executive order. Non-profit and commercial organizations that implement Federal programs for the States are also subject to State requirements.

§ 226.2 Definitions.

Accrued expenditures means the charges incurred by the recipient during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subrecipients, and other payees; and,

(3) Other amounts becoming owed under programs for which no current services or performance is required.

Accrued income means the sum of:

(1) Earnings during a given period from services performed by the recipient, and goods and other tangible property delivered to purchasers, and

(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

Acquisition cost of equipment means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

Advance means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

Agreement Officer means a person with the authority to enter into, administer, terminate and/or closeout assistance agreements subject to this part, and make related determinations and findings on behalf of USAID. An Agreement Officer can only act within the scope of a duly authorized warrant or other valid delegation of authority. The term ''Agreement Officer'' includes persons warranted as ''Grant Officers.'' It also includes certain authorized representatives of the Agreement Officer acting within the limits of their authority as delegated by the Agreement Officer.

Award means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants, cooperative agreements and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: Technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

Cash contributions means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

Closeout means the process by which the Agreement Officer determines that all applicable administrative actions and all required work of the award have been completed by the recipient and USAID.

Contract means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

Cost sharing or matching means that portion of project or program costs not borne by the Federal Government.

Date of completion means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which USAID sponsorship ends.

Disallowed costs means those charges to an award that the USAID Agreement Officer determines to be unallowable, in accordance with the applicable Federal costs principles or other terms and conditions contained in the award.

Equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, consistent with recipient policy, lower limits may be established.

Excess property means property under the control of USAID that, as determined by the head of the Agency, is no longer required for its needs or the discharge of its responsibilities.

Exempt property means tangible personal property acquired in whole or in part with Federal funds, where the Federal awarding agency has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

Federal awarding agency means the Federal agency that provides an award to the recipient.

Federal funds authorized means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

Federal share of real property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

Funding period means the period of time when Federal funding is available for obligation by the recipient.

Intangible property and debt instruments means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

Obligations means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

Outlays or expenditures means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applies and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

Personal property means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

Prior approval means written approval by an authorized official evidencing prior consent.

Program income means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in §§ 226.24 (e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in USAID regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

Project costs means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

Project period means the period established in the award document during which Federal sponsorship begins and ends.

Property means, unless otherwise stated, real property, equipment, supplies, intangible property and debt instruments.

Real Property means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

Recipient means an organization receiving a grant or cooperative agreement directly from USAID to carry out a project or program. The term includes the following types of U.S. organizations: public and private institutions of higher education; public and private hospitals; quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers; and commercial organizations. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

Research and development means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. ''Research'' is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. ''Development'' is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

Small awards means a grant or cooperative agreement not exceeding the small purchase threshold fixed at 41 U.S.C. 403(11).

Subaward means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of ''award'' in this section.

Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided.

Supplies means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (''subject inventions''), as defined in 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements.''

Suspension means an action by USAID that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award. Suspension of an award is a separate action from suspension under USAID regulations implementing E.O.s 12549 and 12689, ''Debarment and Suspension.'' See 22 CFR Part 208.

Termination means the cancellation of USAID sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

Third party in-kind contributions means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind

contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

Unliquidated obligations, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by USAID that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

Unrecovered indirect cost means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

USAID means the United States Agency for International Development.

Working capital advance means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

§ 226.3 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision § 226.4.

§ 226.4 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part shall be permitted only in unusual circumstances. USAID may apply more restrictive requirements to a class of recipients when approved by OMB. USAID may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by the USAID Deputy Assistant Administrator for Management.

§ 226.5 Subawards.

Unless sections of this part specifically exclude subrecipients from coverage, the provisions of this part shall be applied to subrecipients if such subrecipients are organizations which, if receiving awards directly from USAID, would fall within the definition of recipients. State and local government subrecipients are subject to the provisions of regulations implementing the grants management common rule, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' as amended.

Subpart B—Pre-award Requirements

§ 226.10 Purpose.

Sections 226.11 through 226.17 prescribe forms and instructions and other pre-award matters to be used in applying for USAID awards.

§ 226.11 Pre-award policies.

(a) *Use of Grants and Cooperative Agreements, and Contracts.* In each instance USAID shall decide on the appropriate award instrument (i.e., grant cooperative agreement or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, ''substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.'' Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) *Public Notice and Priority Setting.* USAID shall notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

§ 226.12 Forms for applying for Federal assistance.

(a) USAID shall comply with the applicable report clearance requirements of 5 CFR part 1320, ''Controlling Paperwork Burdens on the Public,'' with regard to all forms used in place of or as a supplement to the Standard Form 424 (SF–424) series.

(b) Applicants shall use the SF–424 series or those forms and instructions prescribed by USAID.

(c) For Federal programs covered by E.O. 12372, ''Intergovernmental Review of Federal Programs,'' the applicant shall complete the appropriate sections of the SF–424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the Federal awarding agency or the Catalog of Federal Domestic Assistance. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

(d) Federal awarding agencies that do not use the SF–424 form should indicate whether the application is subject to review by the State under E.O. 12372.

§ 226.13 Debarment and suspension.

USAID and recipients shall comply with the nonprocurement debarment and suspension common rule implementing E.O.s 12549 and 12689, ''Debarment and Suspension,'' 22 CFR Part 208. This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 226.14 Special award conditions.

If an applicant or recipient: Has a history of poor performance, is not financially stable, has a management system that does not meet the standards prescribed in this part, has not conformed to the terms and conditions of a previous award, or is not otherwise responsible, the USAID Agreement Officer may impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: The nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions will be promptly removed once the conditions that prompted them have been corrected.

§ 226.15 Metric system of measurement.

(a) The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce.

(b) Wherever measurements are required or authorized, they shall be made, computed, and recorded in metric system units of measurement, unless otherwise authorized by the

agreement officer in writing when it has been found that such usage is impractical or is likely to cause U.S. firms to experience significant inefficiencies or the loss of markets. Where the metric system is not the predominant standard for a particular application, measurements may be expressed in both the metric and the traditional equivalent units, provided the metric units are listed first.

§ 226.16 Resource Conservation and Recovery Act.

Under the Act, any U.S. State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with Section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247–254). Accordingly, State and local institutions of higher education and hospitals that receive direct Federal awards or other Federal funds shall given preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

§ 226.17 Certifications and representations.

Unless prohibited by statute or codified regulation, USAID may at some future date, allow recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

Subpart C—Post-Award Requirements

Financial and Program Management

§ 226.20 Purpose of financial and program management.

Sections 226.21 through 226.28 prescribe standards for financial management systems, methods for making payments and rules for: Satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of costs and establishing funds availability.

§ 226.21 Standards for financial management systems.

(a) Recipients shall relate financial data to performance data and develop unit cost information whenever practical.

(b) Recipients' financial management systems shall provide for the following.

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in § 226.52. While USAID requires reporting on an accrual basis, if the recipient maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for their reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to all Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101–453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, ''Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs.''

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records, including cost accounting records, that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, USAID, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) USAID may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, ''Surety Companies Doing Business with the United States.''

§ 226.22 Payment

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b)(1) Recipients will be paid in advance, provided they maintain or demonstrate the willingness to maintain:

(i) Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and

(ii) financial management systems that meet the standards for fund control and accountability as established in Section 226.21.

(2) Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances will be consolidated to cover anticipated cash needs for all awards made by USAID to the recipient.

(1) Advance payment mechanisms include, but are not limited to, USAID Letter of Credit, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients will be authorized to submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

(d) Requests for Treasury check advance payment shall be submitted on SF–270, ''Request for Advance or Reimbursement,'' or other forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special USAID instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) of this section cannot be met. USAID may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, USAID shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients are authorized to submit a request for reimbursement at least monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and USAID has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the USAID Agreement Officer may provide cash on a working capital advance basis. Under this procedure, USAID shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the recipient's disbursing cycle, normally 30 days. Thereafter, USAID shall reimburse the recipient for its actual cash disbursements. The working capital advance method of payment will not be used for recipients unwilling or unable to provide timely advances to their subrecipients to meet the subrecipients' actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments. This paragraph is not applicable to such earnings which are generated as foreign currencies.

(h) Unless otherwise required by statute, USAID will not withhold payments for proper charges made by recipients at any time during the project period unless:

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements, or

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A–129, ''Managing Federal Credit Programs.'' Under such conditions, USAID may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows.

(1) Except for situations described in paragraph (i)(2) of this section, or as otherwise provided in USAID regulations or implementing guidance governing endowment funds, USAID does not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients are encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless:

(1) The recipient receives less than $120,000 in Federal awards per year,

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances, or

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) Except as otherwise provided in the terms and conditions of the award in accordance with USAID regulations or other implementing guidance, for those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the Federal awarding agency, it waives its right to recover the interest under CMIA.

(m) Except as noted elsewhere in this part, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. USAID shall not require more than an original and two copies of these forms.

(1) The SF–270, Request for Advance or Reimbursement, is the standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. USAID has the option of using this form for construction programs in lieu of the SF–271, ''Outlay Report and Request for Reimbursement for Construction Programs.''

(2) The SF–271, Outlay Report and Request for Reimbursement for Construction Programs, is the standard form to be used for requesting reimbursement for construction programs. However, USAID may substitute the SF–270 when it determines that it provides adequate information to meet Federal needs.

§ 226.23 Cost sharing or matching.

(a) All contributions, including cash and third party inkind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria.

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget.

(7) Conform to other provisions of this part, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If USAID authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of:

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation, or

(2) The current fair market value. However, when there is sufficient justification, the USAID Agreement Officer may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organizations. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if:

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching, or

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the USAID Agreement Officer has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications.

(1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(i) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties.

(1) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees,

(2) The basis for determining the valuation for personal services, material, equipment, buildings and land shall be documented.

§ 226.24 Program income.

(a) Recipients shall apply the standards set forth in this section to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period shall be retained by the recipient and, in accordance with USAID regulations, other implementing guidance, or the terms and conditions of the award, shall be used in one or more of the following ways:

(1) Added to funds committed by USAID and the recipient to the project or program, and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When the agreement authorizes the disposition of program income as described in paragraph (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3) of this section.

(d) If the terms and conditions of the award do not specify how program income is to be used, paragraph (b)(3) of this section shall apply automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) of this section shall apply automatically unless the terms and conditions of the award provide another alternative, or the recipient is subject to special award conditions, as indicated in § 226.14. Recipients which are commercial organizations may not apply paragraph (b)(1) of this section, in accordance with § 226.82 of this part.

(e) Unless the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) Costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award and they comply with the cost principles applicable to the award funds.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (See §§ 226.30 through 226.37).

(h) Unless the terms and condition of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

§ 226.25 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It

may include either the sum of the Federal and non-Federal shares, or only the Federal share, depending upon USAID requirements as reflected in the terms and conditions of the agreement. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients shall request prior approvals from the USAID Agreement Officer for one or more of the following program or budget related reasons:

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa.

(6) The inclusion, unless waived in the agreement by USAID, of costs that require prior approval in accordance with OMB Circular A–21, ''Cost Principles for Institutions of Higher Education,'' OMB Circular A–122, ''Cost Principles for Non-Profit Organizations,'' or 45 CFR part 74, Appendix E, ''Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals,'' or 48 CFR part 31, ''Contract Cost Principles and Procedures,'' as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved budget of the award, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(e) USAID may waive cost-related and administrative prior written approvals required by this part and OMB Circulars A–21 and A–122, except for requirements listed in paragraphs (c)(1) and (c)(4) of this section. Such waivers may authorize recipients to do any one or more of the following:

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of the USAID Agreement Officer. All pre-award costs are incurred at the recipient's risk (i.e., USAID is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Initiate a one-time extension of the expiration date of the award of up to 12 months. For one-time extensions, the recipient must notify the USAID Agreement Officer in writing, with the supporting reasons and revised expiration date, at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances. The recipient may initiate a one-time extension unless one or more of the following conditions apply:

(i) The terms and conditions of award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) Except for awards under Section 226.14 and Subpart E of this part, for awards that support research, unless USAID provides otherwise in the award or in its regulations or other implementing guidance, the prior approval requirements described in paragraphs (e) (1) through (3) of this section are automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) of this section applies.

(f) USAID may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the USAID Agreement Officer. USAID shall not permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) All other changes to non-construction budgets, except for the changes described in paragraph (j) of this section, do not require prior approval.

(h) For construction awards, recipients shall request prior written approval promptly from the USAID Agreement Officer for budget revisions whenever:

(1) The revision results from changes in the scope or the objective of the project or program,

(2) The need arises for additional Federal funds to complete the project, or

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with the applicable cost principles listed in § 226.27.

(i) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(j) When USAID makes an award that provides support for both construction and nonconstruction work, the USAID Agreement Officer may require the recipient to request prior approval before making any fund or budget transfers between the two types of work supported.

(k) For both construction and nonconstruction awards, recipients shall notify the USAID Agreement Officer in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than $5000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.

(l) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless the USAID Agreement Officer indicates a letter of request suffices.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, the USAID Agreement Officer shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the USAID Agreement Officer shall inform the recipient in writing of the date when the recipient may expect the decision.

§ 226.26 Non-Federal audits.

(a) Recipients and subrecipients shall be subject to the audit requirements contained in OMB Circular A–133, ''Audits of Institutions of Higher Education and Other Non-Profit Institutions.''

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act (31

U.S.C. 7501–7) and Federal awarding agency regulations implementing OMB Circular A–128, ''Audits of State and Local Governments.''

(c) Hospitals not covered by the audit provisions of OMB Circular A–133 shall be subject to the audit requirements of USAID.

(d) Commercial organizations shall be subject to the audit requirements of USAID or the prime recipient as incorporated in the award document.

§ 226.27 Allowable costs.

For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined by the Agreement Officer in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, ''Cost Principles for State and Local Governments.'' The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, ''Cost Principles for Non-Profit Organizations.'' The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, ''Cost Principles for Educational Institutions.'' The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, ''Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.'' The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

§ 226.28 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the award only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the USAID Agreement Officer.

Property Standards

§ 226.30 Purpose of property standards.

Sections 226.31 through 226.37 set forth uniform standards governing management and or disposition of property furnished by the Federal Government or whose cost was charged to a project supported by a Federal award. USAID shall not impose additional requirements unless specifically required by statute. The recipient may use its own property management standards and procedures provided it observes the provisions of §§ 226.31 through 226.37.

§ 226.31 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

§ 226.32 Real property.

(a) Unless the agreement provides otherwise, title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of the Agreement Officer.

(b) The recipient shall obtain written approval from the Agreement Officer for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by USAID.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the recipient shall request disposition instructions from the Agreement Officer. The Agreement Officer will give one or more of the following disposition instructions:

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by USAID and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

§ 226.33 Federally-owned and exempt property.

(a) *Federally-owned property.* (1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to USAID. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to USAID for further Federal agency utilization.

(2) If USAID has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless USAID has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710(I)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821, ''Improving Mathematics and Science Education in Support of the National Education Goals.'') Appropriate instructions shall be issued to the recipient by USAID.

(b) Exempt property. When statutory authority exists, USAID has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions USAID considers appropriate. Such property is ''exempt property'' (see definition in § 226.2). Should USAID not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

§ 226.34 Equipment.

(a) Unless the agreement provides otherwise, title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this part.

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of USAID. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by USAID, then

(2) Activities sponsored by other Federal agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by USAID; second preference shall be given to projects or programs sponsored by other Federal agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by USAID. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of USAID.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following.

(1) Equipment records shall be maintained accurately and shall include the following information.

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient, the Federal Government, or other specified entity.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates USAID for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the Federal awarding agency with whose funds the equipment was purchased.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of $5000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the original Federal awarding agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for USAID-financed equipment, the recipient shall request disposition instructions from the Agreement Officer. USAID shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within USAID, the availability of the equipment shall be reported to the General Services Administration to determine whether a requirement for the equipment exists in other Federal agencies. The USAID Agreement Officer shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse USAID an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient will be reimbursed by USAID for such costs incurred in its disposition.

(h) USAID reserves the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards:

(1) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(2) USAID shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with award funds and federally-owned equipment. If USAID fails to issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.

(3) When USAID exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

§ 226.35 Supplies and other expendable equipment.

(a) Title to supplies and other expendable equipment shall vest in the recipient upon acquisition. If there is a

residual inventory of unused supplies exceeding $5000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

§ 226.36 Intangible property.

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. USAID reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.''

(c) Unless waived by USAID, the Federal Government has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of USAID. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of § 226.34(g).

§ 226.37 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. Recipients shall record liens or other appropriate notices of record to indicate that personal or real property has been acquired, improved or constructed with Federal funds and that use and disposition conditions apply to the property.

Procurement Standards

§ 226.40 Purpose of procurement standards.

Sections 226.41 through 226.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by USAID upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

§ 226.41 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to USAID, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 226.42 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§ 226.43 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly establish all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 226.44 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide, at a minimum, that:

(1) Recipients avoid purchasing unnecessary items,

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government, and

(3) Solicitations for goods and services provide for all of the following.

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors

to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of ''brand name or equal'' descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of USAID awards shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises. To permit USAID, in accordance with the small business provisions of the Foreign Assistance Act of 1961, as amended, to give United States small business firms an opportunity to participate in supplying commodities and services procured under the award, the recipient shall to the maximum extent possible provide the following information to the Office of Small Disadvantaged Business Utilization (OSDBU/MRC), USAID Washington, DC 20523, at least 45 days prior to placing any order or contract in excess of the small purchase threshold:

(i) Brief general description and quantity of goods or services;

(ii) Closing date for receiving quotations, proposals or bids; and

(iii) Address where solicitations or specifications can be obtained.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The ''cost-plus-a-percentage-of-cost'' or ''percentage of construction cost'' methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O.s 12549 and 12689, ''Debarment and Suspension.''

(e) Recipients shall, on request, make available for USAID, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in this part.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403(11) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a ''brand name'' product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

§ 226.45 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 226.46 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

(a) Basis for contractor selection,

(b) Justification for lack of competition when competitive bids or offers are not obtained, and

(c) Basis for award cost or price.

§ 226.47 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 226.48 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction

contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, the USAID Agreement Officer may accept the bonding policy and requirements of the recipient, provided that USAID determines that the Federal Government's interest is adequately protected. In making this determination for contract or subcontracts to be performed overseas, the Agreement Officer shall take into consideration any established local practices relating to security. If such a determination has not been made, the minimum requirements shall be as follows.

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The ''bid guarantee'' shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of its bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A ''performance bond'' is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A ''payment bond'' is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, ''Surety Companies Doing Business with the United States.''

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, USAID, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A to this part, as applicable. Whenever a provision is required to be inserted in a contract under an agreement, the recipient shall insert a statement in the contract that in all instances where the U.S. Government or USAID is mentioned, the recipient's name shall be substituted.

§ 226.49 USAID-Specific procurement requirements

Procurement requirements which are applicable to USAID because of statute and regulation are in Subpart G.

Reports and Records

§ 226.50 Purpose of reports and records.

Sections 226.51 through 226.53 establish the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

§ 226.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in Section 226.26.

(b) The terms and conditions of the agreement will prescribe the frequency with which the performance reports shall be submitted. Except as provided in paragraph 226.51(f), performance reports will not be required more frequently than quarterly or, less frequently than annually. Annual reports shall be due 90 calendar days after the award year; quarterly or semi-annual reports shall be due 30 days after the reporting period. USAID may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report shall not be required after completion of the project.

(d) Performance reports shall generally contain, for each award, brief information on each of the following:

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall submit the original and two copies of performance reports.

(f) Recipients shall immediately notify USAID of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) USAID may make site visits, as needed.

(h) USAID shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

§ 226.52 Financial reporting.

(a) The following forms are used for obtaining financial information from recipients.

(1) SF–269 or SF–269A, Financial Status Report.

(i) USAID will require recipients to use either the SF–269 or SF–269A to report the status of funds for all nonconstruction projects or programs. The type of form required will be established in the award. USAID may, however, have the option of not requiring the SF–269 or SF–269A when the SF–270, Request for Advance or Reimbursement, or SF–272, Report of Federal Cash Transactions, is determined to provide adequate information to meet its needs, except that a final SF–269 or SF–269A shall be required at the completion of the project when the SF–270 is used only for advances.

(ii) The type of reporting required will be established in the agreement. If USAID requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand.

(iii) USAID will determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. The frequency of reports will be established in the agreement. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(iv) Recipients shall submit the SF–269 or SF–269A (an original and two

copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by USAID upon request of the recipient.

(2) SF–272, Report of Federal Cash Transactions.

(i) When funds are advanced to recipients USAID shall require each recipient to submit the SF–272 and, when necessary, its continuation sheet, SF–272a. USAID shall use this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) USAID may require forecasts of Federal cash requirements in the ''Remarks'' section of the report.

(iii) When practical and deemed necessary, USAID may require recipients to report in the ''Remarks'' section the amount of cash advances received in excess of three days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients shall be required to submit not more than the original and two copies of the SF–272 15 calendar days following the end of each quarter. USAID may require a monthly report from those recipients receiving advances totaling $1 million or more per year.

(v) USAID may waive the requirement for submission of the SF–272 for any one of the following reasons:

(A) When monthly advances do not exceed $25,000 per recipient, provided that such advances are monitored through other forms contained in this section;

(B) If, in USAID's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or,

(C) When the electronic payment mechanisms provide adequate data.

(b) When USAID needs additional information or more frequent reports, the following shall be observed.

(1) When additional information is needed to comply with legislative requirements, USAID shall issue instructions to require recipients to submit such information under the ''Remarks'' section of the reports.

(2) When USAID determines that a recipient's accounting system does not meet the standards in Section 226.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. USAID, in obtaining this information, shall comply with report clearance requirements of 5 CFR part 1320.

(3) USAID may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(4) USAID may provide computer or electronic outputs to recipients when such expedites or contributes to the accuracy of reporting.

§ 226.53 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. USAID shall not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by USAID. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by USAID, the 3-year retention requirements is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in paragraph 226.53(g).

(c) Copies of original records may be substituted for the original records if authorized by USAID.

(d) USAID shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, USAID may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) USAID, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, USAID will not place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when USAID can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to USAID.

(g) Indirect cost rate proposals, cost allocations plans, etc. Paragraphs (g)(1) and (g)(2) of this section apply to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) If submitted for negotiation. If the recipient submits to the Federal awarding agency or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) If not submitted for negotiation. If the recipient is not required to submit to the Federal awarding agency or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Suspension, Termination and Enforcement

§ 226.60 Purpose of suspension, termination and enforcement.

Sections 226.61 and 226.62 set forth uniform suspension, termination and enforcement procedures.

§ 226.61 Suspension and termination.

(a) Awards may be terminated (or, with respect to paragraphs (a) (1) and (3) of this section, suspended) in whole or in part if any of the circumstances stated in paragraphs (a)(1) through (4) of this section apply.

(1) By USAID, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By USAID with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) If at any time USAID determines that continuation of all or part of the funding for a program should be suspended or terminated because such assistance would not be in the national interest of the United States or would be in violation of an applicable law, then USAID may, following notice to the recipient, suspend or terminate the award in whole or in part and prohibit the recipient from incurring additional obligations chargeable to the award other than those costs specified in the notice of suspension. If a suspension is effected and the situation causing the suspension continues for 60 days or more, then USAID may terminate the award in whole or in part on written notice to the recipient and cancel any portion of the award which has not been disbursed or irrevocably committed to third parties.

(4) By the recipient upon sending to USAID written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if USAID determines in the case of partial termination that the reduced or modified portion of the award will not accomplish the purposes for which the grant was made, it may terminate the award in its entirety under paragraph (a)(1), (a)(2) or (a)(3) of this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in paragraph 226.71(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 226.62 Enforcement.

(a) Remedies for noncompliance. If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, USAID may, in addition to imposing any of the special conditions outlined in § 226.14, take one or more of the following actions, as appropriate in the circumstances.

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by USAID.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) Hearings and appeals. The recipient may appeal, in accordance with Subpart F, any action taken by USAID on which a dispute exists and a decision by the Agreement Officer has been obtained. There is no right to a hearing on such an appeal.

(c) Effects of suspension and termination. Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless USAID expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable, and

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) Relationship to debarment and suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.s 12549 and 12689 and USAID's implementing regulations (see 22 CFR Part 208).

Subpart D—After-the-Award Requirements

§ 226.70 Purpose.

Sections 226.71 through 226.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 226.71 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. USAID may approve extensions when requested by the recipient.

(b) Unless USAID authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) USAID will make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that USAID has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A–129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, USAID shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 226.31 through 226.37.

(g) In the event a final audit has not been performed prior to the closeout of an award, USAID retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 226.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following.

(1) The right of USAID to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in §§ 226.26.

(4) Property management requirements in §§ 226.31 through 226.37.

(5) Records retention as required in § 226.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of USAID and the recipient, provided the responsibilities of the recipient referred to in paragraph 226.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 226.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. USAID reserves the right to require refund by the recipient of any amount which USAID determines to have been expended for purposes not in accordance with the terms and condition of the award, including but not limited to costs which are not allowable in accordance with the applicable Federal cost principles or other terms and conditions of the award. If not paid within a reasonable period after the demand for payment, USAID may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the recipient, or

(3) Taking other action permitted by law.

(b) Except as otherwise provided by law, USAID will charge interest on an overdue debt in accordance with 4 CFR Chapter II, ''Federal Claims Collection Standards.''

Subpart E—Additional Provisions For Awards to Commercial Organizations

§ 226.80 Scope of subpart.

This subpart contains additional provisions that apply to awards to commercial organizations. These provisions supplement and make exceptions for awards to commercial organizations from other provisions of this part.

§ 226.81 Prohibition against profit.

No funds shall be paid as profit to any recipient that is a commercial organization. Profit is any amount in excess of allowable direct and indirect costs.

§ 226.82 Program income.

The additional costs alternative described in § 226.24(b)(1) may not be applied to program income earned by a commercial organization.

Subpart F—Miscellaneous

§ 226.90 Disputes.

(a) Any dispute under or relating to a grant or agreement shall be decided by the USAID Agreement Officer. The Agreement Officer shall furnish the recipient a written copy of the decision.

(b) Decisions of the USAID Agreement Officer shall be final unless, within 30 days of receipt of the decision, the grantee appeals the decision to USAID's Deputy Assistant Administrator for Management, USAID, Washington, DC 20523. Appeals must be in writing with a copy concurrently furnished to the Agreement Officer.

(c) In order to facilitate review on the record by the Deputy Assistant Administrator for Management, the recipient shall be given an opportunity to submit written evidence in support of its appeal. No hearing will be provided.

(d) Decisions by the Deputy Assistant Administrator for Management shall be final.

Subpart G—USAID-Specific Requirements

§ 226.1001 Eligibility rules for goods and services. [Reserved]

§ 226.1002 Local cost financing. [Reserved]

§ 226.1003 Air transportation. [Reserved]

§ 226.1004 Ocean shipment of goods. [Reserved]

Appendix A to Part 226—Contract Provisions

All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts to be performed in the United States, or to be performed with employees who were recruited in the United States, shall contain a provision requiring compliance with E.O. 11246, ''Equal Employment Opportunity,'' as amended by E.O. 11375, ''Amending Executive Order 11246 Relating to Equal Employment Opportunity,'' and as supplemented by regulations at 41 CFR Chapter 60, ''Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,'' to the extent required by the foregoing.

2. *Copeland ''Anti-Kickback'' Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subawards in excess of $2,000 for construction or repair to be performed in the United States awarded by recipients and subrecipients shall include a provision for compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, ''Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States''). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a–7)*—When required by Federal program legislation, all construction, alteration, and/or repair contracts to be performed in the United States awarded by the recipients and subrecipients of more than $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) and as supplemented by Department of Labor regulations (29 CFR part 5, ''Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction''). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of $2000 for construction contracts to be performed in the United States and in excess of $2500 for other such contracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,'' and any implementing regulations issued by the awarding agency.

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts and subawards of amounts in excess of $100,000 to be performed in the United States shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42

U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award exceeding $100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (E.O.s 12549 and 12689)*—Certain contracts shall not be made to parties listed on the nonprocurement portion of the General Services Administration's ''Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs'' in accordance with E.O.s 12549 and 12689, ''Debarment and Suspension.'' This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principals.

9. Contracts which require performance outside the United States shall contain a provision requiring Worker's Compensation Insurance (42 U.S.C. 1651, et seq.). As a general rule, Department of Labor waivers will be obtained for persons employed outside the United States who are not United States citizens or residents provided adequate protection will be given such persons. The recipient should refer questions on this subject to the USAID Agreement Officer.

* * * * *

Dated: January 6, 1995.

Michael D. Sherwin,

Deputy Assistant Administrator for Management.

[FR Doc. 95–975 Filed 1–18–95; 8:45 am]

BILLING CODE 6116–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH71–1–6781, OH72–1–6782; FRL–5140–7]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The USEPA is approving, in final, two exemption requests from the requirements contained in section 182(f) of the Clean Air Act (Act) for the Toledo and Dayton ozone nonattainment areas in Ohio. These exemption requests, submitted by the State of Ohio, are based upon three years of ambient air monitoring data which demonstrate that the National Ambient Air Quality Standard (NAAQS) for ozone has been attained in each of these areas without additional reductions of nitrogen oxides (NO_X). Section 182(f) of the Act requires States with areas designated nonattainment of the NAAQS for ozone, and classified as moderate nonattainment and above, to adopt reasonably available control technology (RACT) rules for major stationary sources of NO_X, and to provide for nonattainment area new source review (NSR) for new sources and modifications that are major for NO_X. Section 182(f) provides that these requirements do not apply for areas outside an ozone transport region if USEPA determines that additional reductions of NO_X would not contribute to attainment of the NAAQS for ozone in the area.

EFFECTIVE DATE: This action will be effective February 21, 1995.

ADDRESSES: Written comments should be addressed to:

William MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the exemption requests are available for inspection at the following location (it is recommended that you contact Richard Schleyer at (312) 353–5089 before visiting the Region 5 office):

United States Environmental Protection Agency, Region 5, Air Enforcement Branch, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Richard Schleyer, Regulation Development Section, Air Enforcement Branch (AE–17J), Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 353–5089.

SUPPLEMENTARY INFORMATION:

I. Background

The air quality planning requirements for the reduction of NO_X emissions are set out in section 182(f) of the Act. Section 182(f) of the Act requires States with areas designated nonattainment of the NAAQS for ozone, and classified as moderate nonattainment and above, to impose the same control requirements for major stationary sources of NO_X as apply to major stationary sources of volatile organic compounds (VOC). These requirements include the adoption of RACT rules for major stationary sources and nonattainment area NSR for major new sources and major modifications. Section 182(f) provides further that these NO_X requirements do not apply for areas outside an ozone transport region if USEPA determines that additional reductions of NO_X would not contribute to attainment. Also, the NO_X-related general and transportation conformity provisions (see 58 FR 63214 and 58 FR 62188) would not apply in an area that is granted a section 182(f) exemption. In an area that did not implement the section 182(f) NO_X requirements, but did achieve attainment of the ozone standard, as demonstrated by ambient air monitoring data (consistent with 40 CFR Part 58 and recorded in the USEPA's—Aerometric Information Retrieval System (AIRS)), it is clear that the additional NO_X reductions required by section 182(f) would not contribute to attainment.

II. Criteria for Evaluation of Section 182(f) Exemption Requests

The criteria established for the evaluation of an exemption request from the section 182(f) requirements are set forth in a memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, dated May 27, 1994, entitled ''Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria.'' Additional guidance is provided in a document entitled ''Guideline for Determining the Applicability of Nitrogen Oxides Requirements Under Section 182(f),'' dated December 1993, from USEPA, Office of Air Quality Planning and Standards, Air Quality Management Division.

III. State Submittals

On September 20, 1993, and November 8, 1993, the State of Ohio submitted requests to redesignate the Toledo (Lucas and Wood Counties) and Dayton (Montgomery, Greene, Miami, and Clark Counties) ozone nonattainment areas to attainment areas for the NAAQS for ozone. These redesignation requests are currently under review and will be evaluated in a separate rulemaking.

Included as part of the redesignation submittals were requests that the Toledo and Dayton ozone nonattainment areas

be exempt from the requirements contained in section 182(f) of the Act. These exemption requests are based upon three years of ambient air monitoring data (1991–1993) which demonstrate that the NAAQS for ozone has been attained in each of these areas without additional reductions of NO_X.

IV. Analysis of State Submittals

The USEPA has reviewed the ambient air monitoring data for ozone (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS) submitted by the OEPA in support of these exemption requests.

For ozone, an area is considered attainment of the NAAQS if there are no violations, as determined in accordance with 40 CFR Part 50.9, based on quality assured monitoring data from three complete consecutive calendar years. A violation of the ozone NAAQS occurs when the annual average number of expected exceedances is greater than 1.0 at any site in the area at issue. An exceedance occurs when the daily maximum hourly ozone concentration exceeds 0.124 parts per million (ppm).

The following ozone exceedances were recorded for the period from 1991 to 1993:

Toledo: Lucas County, 306 N. Yondota (1991)—0.127 ppm and (1993)—0.126 ppm; average expected exceedances: 0.7. Friendship Park (1993)—0.136 ppm; average expected exceedances: 0.3.

Dayton: Montgomery County, 2100 Timberlane (1993)—0.125 ppm; average expected exceedances: 0.3.

Thus, the annual average expected exceedances in a three year period were less than 1.0 and both areas are meeting the air quality standard for ozone.

A more detailed summary of the ozone monitoring data for both areas is provided in the USEPA technical support document dated April 20, 1994.

V. NO_X RACT Rules

The State of Ohio submitted adopted NO_X RACT rules to USEPA on July 1, 1994, for the Toledo, Dayton, and Cleveland ozone nonattainment areas. These rules are currently under review and will be evaluated in a separate rulemaking. These rules, when approved by USEPA, may be suspended by the State for the Toledo and Dayton areas upon the final approval effective date of the Section 182(f) exemption requests addressed in this Notice.

VI. Inspection and Maintenance (I/M) Programs

The I/M Final Rule (57 FR 52950) requires States to submit to USEPA a fully adopted I/M program by November 15, 1993. At this time, however, the preliminary interpretive guidance on basic I/M, is discussed in the USEPA policy memorandum dated September 17, 1993, from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, entitled ''State Implementation Plan Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' (Shapiro Memorandum). The Shapiro Memorandum provides that, for areas where maintenance plans do not rely on implementation of a basic I/M program immediately following redesignation, upon revision to the I/M rule, if a State adopts and submits as a revision to its SIP the following:

- The legislative authority for a basic I/M program;
- A provision in the SIP providing that basic I/M be placed in the contingency measure portion of the maintenance plan upon redesignation; and
- An enforceable schedule and commitment by the Governor or his/her designee for adoption and implementation of a basic I/M program upon a specified, appropriate triggering event;

The State would have met the minimum requirements for I/M as they relate to USEPA's consideration of the State's redesignation request submitted for a nonattainment area. The USEPA is presently proceeding to establish this interpretation through regulatory action (see 59 FR 33237).

The State of Ohio is required to adopt a basic I/M program for the Toledo ozone nonattainment area (encompassing Lucas and Wood Counties). However, the State has submitted a redesignation request (SIP revision) to attainment of the NAAQS for ozone for the Toledo area. This SIP revision includes legislative authority for the adoption of a basic I/M program; a basic I/M program as a contingency measure in the maintenance plan upon redesignation; and an enforceable schedule for the implementation of the basic I/M program upon a specified triggering event. Under the approach set forth in the Shapiro Memorandum, the State has met the requirements for an area requesting redesignation that is required to adopt a basic I/M program.

For the Dayton ozone nonattainment area (encompassing Clark, Greene, Miami, and Montgomery Counties), the Dayton local area has opted for an enhanced I/M program. This requires the Dayton area to comply with all applicable enhanced I/M program requirements. The I/M Final Rule (57 FR 52950) provides that if the USEPA Administrator determines that NO_X emission reductions are not beneficial in a given ozone nonattainment area, then NO_X emission reductions are not required of the enhanced I/M program, but the program shall be designed to offset NO_X increases resulting from the repair of hydrocarbon (HC) and carbon monoxide (CO) failures.[1]

Upon the effective date of this action, the Dayton area shall not be required to demonstrate compliance with the enhanced I/M performance standard for NO_X. However, the Dayton area shall be required to demonstrate, using USEPA's Mobile Source Emissions Model, Mobile 5a (or its successor), that NO_X emissions will be no higher than in the absence of any I/M program.

VII. Withdrawal of the Exemptions

Continuation of the Section 182(f) exemptions granted herein is contingent upon continued monitoring and continued attainment and maintenance of the ozone NAAQS in the affected areas. If a violation of the ozone NAAQS is monitored in the Toledo or Dayton area(s) (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS), USEPA will provide notice to the public in the Federal Register. A determination that the NO_X exemption no longer applies would mean that the NO_X NSR and the NO_X-related general and transportation conformity provisions would immediately be applicable (see 58 FR 63214 and 58 FR 62188). The NO_X RACT requirements would also be applicable, with a reasonable time provided as necessary to allow major stationary sources subject to the RACT requirements to purchase, install and operate the required controls. The USEPA believes that the State may provide sources a reasonable time period after the USEPA determination to actually meet the RACT emission limits. The USEPA expects such time period to be as expeditious as practicable, but in no case longer than 24 months. If a nonattainment area is redesignated to attainment of the ozone NAAQS, NO_X RACT shall be implemented as stated in the USEPA-approved maintenance plan.

VIII. Notice of Proposed Rulemaking and Responses to Comments

The USEPA published a notice proposing to approve the exemption

[1] Additional clarification concerning the I/M requirements and areas with no NO_X exemptions is provided in a memorandum from Mary T. Smith, Acting Director, Office of Mobile Sources, dated October 14, 1994, entitled ''I/M Requirements in NO_X RACT Exempt Areas.''

requests for the Toledo and Dayton nonattainment areas in the July 26, 1994 Federal Register (59 FR 37947). The USEPA received comments supporting and adverse to this proposed action. Copies of all comments have been placed in the docket file. The following entities submitted adverse or supporting comments. Some of the comments addressed similar points. The USEPA has responded to the adverse comments by issue as set forth below.

Submitting Entity (Date Received by USEPA)

Citizens Campaign for the Environment (7–27–94); Natural Resources Defense Council (8–9–94 and 8–24–94); New York State Electric and Gas Corporation (8–10–94); Northeast States for Coordinated Air Use Management (8–15–94 and 9–28–94); State of New York Department of Environmental Conservation (8–16–94 and 10–05–94); Commonwealth of Pennsylvania Department of Environmental Resources (8–31–94); Southern Environmental Law Center (10–3–94); Pollution Probe (10–03–94); Ohio Sierra Club (10–03–94); Conservation Law Foundation (10–03–94); The Lung Association (Ontario, 10–11–94); Ohio Environmental Protection Agency (10–26–94); Fuller & Henry (10–26–94); and Individual Residents from the State of Ohio (various dates between 8/31/94 and 10/13/94).

A summary of the adverse comments and USEPA's responses follows:

Procedural Comments: Several commenters argued that USEPA should not approve the waiver requests at issue on procedural grounds. NO_X exemptions are provided for in two separate parts of the Act, section 182(b)(1) and section 182(f). Commenters took the position that because the NO_X exemption tests in subsections 182(b)(1) and 182(f)(1) include language indicating that action on such requests should take place ''when [EPA] approves a plan or plan revision,'' that all NO_X exemption determinations by USEPA, including exemption actions taken under the petition process established by subsection 182(f)(3), must occur during consideration of an approvable attainment or maintenance plan, unless the area has been redesignated to attainment for the ozone NAAQS. These commenters also argue that even if the petition procedures of subsection 182(f)(3) may be used to relieve areas of certain NO_X requirements, exemptions from the NO_X conformity requirements must follow the process provided in subsection 182(b)(1), since this is the only provision explicitly referenced by section 176(c), in the Act's conformity provisions.

USEPA Response: Section 182(f) contains very few details regarding the administrative procedure for USEPA action on NO_X exemption requests. The absence of specific guidelines by Congress leaves USEPA with discretion to establish reasonable procedures, consistent with the requirements of the Administrative Procedure Act (APA).

Despite the interpretation of the commenters regarding the process for considering exemption requests under section 182(f), USEPA believes that subsections 182(f)(1) and 182(f)(3) provide independent procedures for USEPA to act on NO_X exemption requests. The language in subsection 182(f)(1), which indicates that USEPA should act on NO_X exemptions in conjunction with action on a plan or plan revision, does not appear in subsection 182(f)(3). While subsection 182(f)(3) references subsection 182(f)(1), USEPA believes that this reference encompasses only the substantive tests in paragraph (1) [and, by extension, paragraph (2)], and not the procedural requirement that USEPA act on exemptions only when acting on SIPs. Additionally, paragraph (3) provides that ''person[s]'' (which section 302(e) of the Act defines to include States) may petition for NO_X exemptions ''at any time,'' and requires USEPA to make its determination within six months of the petition's submission. These key differences lead USEPA to believe that Congress intended the exemption petition process of paragraph (3) to be distinct and more expeditious than the longer plan revision process intended under paragraph (1).

Section 182(f)(1) appears to contemplate that exemption requests submitted under these paragraphs are limited to States, since States are the entities authorized under the Act to submit plans or plan revisions. By contrast, section 182(f)(3) provides that ''person[s]'' [2] may petition for a NO_X determination ''at any time'' after the ozone precursor study required under section 185B of the Act is finalized,[3] and gives USEPA a limit of 6 months after filing to grant or deny such petitions. Since individuals may submit petitions under paragraph (3) ''at any time'' this must include times when there is no plan revision from the State pending at USEPA. The specific timeframe for USEPA action established in paragraph (3) is substantially shorter than the timeframe usually required for States to develop and for USEPA to take action on revisions to a SIP. These differences strongly suggest that Congress intended the process for acting on petitions under paragraph (3) to be distinct—and more expeditious—from the plan revision process intended under paragraph (1). Thus, USEPA believes that paragraph (3)'s reference to paragraph (1) encompasses only the substantive tests in paragraph (1) (and, by extension, paragraph (2)), not the requirement in paragraph (1) for USEPA to grant exemptions only when acting on plan revisions.

With respect to major stationary sources, section 182(f) requires States to adopt NO_X NSR and RACT rules, unless exempted. These rules were generally due to be submitted to USEPA by November 15, 1992. Thus, in order to avoid sanctions under the Act, areas seeking a NO_X exemption would have needed to submit their exemption request for USEPA review and rulemaking action several months before November 15, 1992. In contrast, the Act specifies that the attainment demonstrations are not due until November 1993 or 1994 (and USEPA may take 12–18 months to approve or disapprove the demonstration). For marginal ozone nonattainment areas (subject to NO_X NSR), no attainment demonstration is called for in the Act. For maintenance plans, the Act does not specify a deadline for submittal of maintenance demonstrations. Clearly, the Act envisions the submittal of, and USEPA action on, exemption requests, in some cases, prior to submittal of attainment or maintenance demonstrations.

The Act requires conformity with regard to federally-supported NO_X generating activities in relevant nonattainment and maintenance areas. However, USEPA's conformity rules explicitly provide that these NO_X requirements would not apply if USEPA grants an exemption under section 182(f).

In response to the comment that section 182(b)(1) should be the appropriate vehicle for dealing with exemptions from the NO_X requirements of the conformity rule, USEPA notes that this issue has previously been raised in a formal petition for reconsideration of USEPA's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the transportation and general conformity rules. Thus the issue is under further consideration, but at this time the Agency's position is as stated above.

[2] Section 302(e) of the Act defines the term ''person'' to include States.

[3] The final section 185B report was issued July 30, 1993.

Additionally, subsection 182(f)(3) requires that NO_X exemption petition determinations be made by USEPA within six months. The USEPA has stated in previous guidance that it intends to meet this statutory deadline as long as doing so is consistent with the APA. The USEPA believes that the applicable rules governing this issue are those that appear in USEPA's final conformity regulations, and that USEPA remains bound by their existing terms.

Modeling Comments: Some commenters stated that the modeling required by USEPA is insufficient to establish that NO_X reductions would not contribute to attainment since only one level of NO_X control, i.e., ''substantial'' reductions, is required to be analyzed. They further explain that an area must submit an approvable attainment plan before USEPA can know whether NO_X reductions will aid or undermine attainment.

USEPA Response: As described in USEPA's December 1993 NO_X exemption guidance,[4] photochemical grid modeling is generally needed to document cases where NO_X reductions are counterproductive to net air quality, do not contribute to attainment, do not show a net ozone benefit, or include excess reductions. The Urban Airshed Model (UAM) or, in the Ozone Transport Region (OTR), the Regional Oxidant Model (ROM), are acceptable methods for these purposes. The December guidance also provides that, under the ''not contribute to attainment test,'' an area may qualify for a NO_X exemption by attaining the ozone standard, as demonstrated by three years of ambient air monitoring data. The exemption requests submitted by the State for the Toledo and Dayton areas are based upon ambient air monitoring data. Therefore, adverse comments submitted concerning modeling are not relevant to this action, and are not being further addressed.

Public Hearing Request: Some commenters requested that a public hearing be held on this action.

USEPA Response: This action is not considered a SIP revision and therefore the requirement for a public hearing under section 110(a) of the Act is not applicable.

Environmental Impact Statement (EIS) Request: Some commenters requested that an EIS be prepared regarding this action.

USEPA Response: All Clean Air Act programs are exempted from the procedural requirements of the National Environmental Policy Act (NEPA) under section 7(c)(1) of the Energy Supply and Environmental Coordination Act, 15 U.S.C. 793(c)(1). Therefore, USEPA is not preparing an EIS for this action.

SIP Status Request: One commenter requested the status of other SIP revisions (i.e., the 15% rate-of-progress plan and the redesignation request) required to be submitted by the State.

USEPA Response: This action only addresses the section 182(f) exemption requests submitted by the State of Ohio for the Toledo and Dayton areas and USEPA final action on such requests are not dependent on final actions on other required SIP submittals, such as the ones mentioned. Non-related SIP revisions will be dealt with separately.

Toledo Transportation Improvement Program (TIP): One commenter provided comments on the basis of the determination of the conformity of the Toledo TIP and analysis of other Ohio TIPs.

USEPA Response: This action only addresses the section 182(f) exemption requests submitted by the State of Ohio for the Toledo and Dayton areas. Therefore, the comment is not being further addressed.

Attainment Data Comments: Three years of ''clean'' data fail to demonstrate that NO_X reductions would not contribute to attainment of the NAAQS for ozone. The USEPA's policy erroneously equates the absence of a violation for one three-year period with ''attainment.''

USEPA Response: The USEPA has separate criteria for determining if an area should be redesignated to an ozone attainment area under section 107 of the Act. The section 107 redesignation criteria are more comprehensive than the Act requires with respect to NO_X exemptions under section 182(f).

Under section 182(f)(1)(A), an exemption from the NO_X requirements may be granted for nonattainment areas outside an OTR if USEPA determines that ''additional reductions of (NO_X) would not contribute to attainment'' of the ozone NAAQS in those areas. In some cases, an ozone nonattainment area might attain the ozone standard, as demonstrated by 3 years of adequate monitoring data, without having implemented the section 182(f) NO_X provisions over that 3-year period.

In cases where a nonattainment area is demonstrating attainment with 3 consecutive years of air quality monitoring data without having implemented the section 182(f) NO_X provisions, USEPA believes that the section 182(f) test is met since ''additional reductions of (NO_X) would not contribute to attainment'' of the NAAQS in that area. In cases where it is warranted, USEPA's approval of the exemption is granted on a contingent basis (i.e., the exemption would last for only as long as the area's monitoring data continue to demonstrate attainment).

Downwind Area Comments: Several commenters argued that USEPA's December 1993 guidance prohibits granting a section 182(f) waiver based on 3 years of clean data if evidence exists showing that the waiver would interfere with attainment or maintenance in downwind areas. The commenters argued that such condition should also apply to waiver requests based on modeling. Exemptions in Ohio cities, they claim, are likely to exacerbate ozone nonattainment downwind, and therefore are not consistent with the Act. If the exemptions are granted, emissions from new stationary sources and the transportation sector in Ohio, which are projected to increase, could delay attainment of the ozone standard in areas in the northeastern United States.

These commenters further claim that USEPA modeling has demonstrated that Ohio is a significant contributor to atmospheric transport of ozone precursors to the OTR. Since this modeling indicates that emissions of NO_X from stationary sources west of the OTR contribute to increased ozone levels in the northeast, they argued that control of NO_X emissions in the OTR and in States west of the OTR will contribute to significant reductions in peak ozone levels within the OTR.

USEPA Response: As a result of such comments, USEPA has re-evaluated its position on this issue and decided to revise the previously-issued guidance. As described below, USEPA intends to use its authority under section 110(a)(2)(D) to require a State to reduce NO_X emissions from stationary and/or mobile sources where there is evidence, such as photochemical grid modeling, showing that NO_X emissions would contribute significantly to nonattainment in, or interfere with maintenance by, any other State. This action would be independent of any action taken by USEPA on a NO_X exemption request for stationary sources under section 182(f). That is, USEPA action to grant or deny a NO_X exemption request under section 182(f) would not shield that area from USEPA action to require NO_X emission reductions, if necessary, under section 110(a)(2)(D).

Modeling analyses are underway in many areas for the purpose of demonstrating attainment in the 1994

[4] ''Guideline for Determining the Applicability of Nitrogen Oxide Requirements under section 182(f),'' from John S. Seitz, Director, Office of Air Quality Planning and Standards, dated December 19, 1993.

SIP revisions. Recent modeling data suggest that certain ozone nonattainment areas may benefit from reductions in NO_X emissions far upwind of the nonattainment area. For example, the northeast corridor and the Lake Michigan areas are considering attainment strategies which rely in part on NO_X emission reductions hundreds of miles upwind. The USEPA is working with the States and other organizations to design and complete studies which consider upwind sources and quantify their impacts. As the studies progress, USEPA will continue to work with the States and other organizations to develop mutually acceptable attainment strategies.

At the same time as these large scale modeling analyses are being conducted, certain nonattainment areas that are located in the area being modeled, have requested exemptions from NO_X requirements under section 182(f). Some areas requesting an exemption may impact upon downwind nonattainment areas. The USEPA intends to address the transport issue through section 110(a)(2)(D) based on a domain-wide modeling analysis.

Under section 182(f) of the Act, an exemption from the NO_X requirements may be granted for nonattainment areas outside an ozone transport region if USEPA determines that ''additional reductions of (NO_X) would not contribute to attainment of the national ambient air quality standard for ozone in the area.'' [5] As described in section 4.3 of the December 16, 1993 guidance document, USEPA believes that the term ''area'' means the ''nonattainment area,'' and that USEPA's determination is limited to consideration of the effects in a single nonattainment area due to NO_X emissions reductions from sources in the same nonattainment area.

Section 4.3 of the guidance goes on to encourage, but not require, States/petitioners to include consideration of the entire modeling domain, since the effects of an attainment strategy may extend beyond the designated nonattainment area. Specifically, the guidance encourages States to ''consider imposition of the NO_X requirements if needed to avoid adverse impacts in downwind areas, either intra- or inter-State. States need to consider such impacts since they are ultimately responsible for achieving attainment in all portions of their State (see generally section 110) and for ensuring that emissions originating in their State do not contribute significantly to nonattainment in, or interfere with maintenance by, any other State (see section 110(a)(2)(D)(i)(I)).''

In contrast, Section 4.4 of the guidance states that the section 182(f) demonstration *would not be approved* if there is evidence, such as photochemical grid modeling, showing that the NO_X exemption would interfere with attainment or maintenance in downwind areas. The guidance goes on to explain that section 110(a)(2)(D) (not section 182(f)) prohibits such impacts.

Consistent with the guidance in section 4.3, USEPA believes that the section 110(a)(2)(D) and 182(f) provisions must be considered independently. Thus, if there is evidence that NO_X emissions in an upwind area would interfere with attainment or maintenance in a downwind area, that action should be separately addressed by the State(s) or, if necessary, by USEPA in a section 110(a)(2)(D) action. A section 182(f) exemption request should be independently considered by USEPA. In some cases, then, USEPA may grant an exemption from across-the-board NO_X RACT controls under section 182(f) and, in a separate action, require NO_X controls from stationary and/or mobile sources under section 110(a)(2)(D). It should be noted that the controls required under section 110(a)(2)(D) may be more or less stringent than RACT, depending upon the circumstances. Consistent with these principles, USEPA is approving these exemption requests under 182(f) of the Act. If evidence appears that NO_X emissions in an upwind area would interfere with attainment or maintenance in a downwind area, appropriate action shall be taken by the State(s) or, if necessary, by USEPA under section 110(a)(2)(D).

Scope of Exemption Comments: Comments were received regarding exemption of areas from the NO_X requirements of the conformity rules. Several commenters argue that the exemptions should waive only the requirements of section 182(b)(1) to contribute to specific annual reductions, not the requirement that conformity SIPs contain information showing the maximum amount of motor vehicle NO_X emissions allowed under the transportation conformity rules and, similarly, the maximum allowable amounts of any such NO_X emissions under the general conformity rules. The commenters admit that, in prior guidance, USEPA has acknowledged the need to amend a drafting error in the existing transportation conformity rules to ensure consistency with motor vehicle emissions budgets for NO_X, but want USEPA, in actions on NO_X exemptions, to explicitly affirm this obligation and to also avoid granting waivers until a budget controlling future NO_X increases is in place.

USEPA Response: With respect to conformity, USEPA's conformity rules [6] provide a NO_X waiver if an area receives a section 182(f) exemption. In rulemaking on ''Conformity; General Preamble for Exemption From Nitrogen Oxides Provisions,'' 59 FR 31238, 31241 (June 17, 1994), USEPA reiterated its view that in order to conform, nonattainment and maintenance areas must demonstrate that both the transportation plan and the transportation improvement program (TIP) are consistent with the motor vehicle emissions budget for NO_X even where a conformity NO_X waiver has been granted. Due to a drafting error, that view is not reflected in the current transportation conformity rules. As the commenters correctly note, USEPA states in the June 17th notice that it intends to remedy the problem by amending the conformity rule. Although that notice specifically mentions only requiring consistency with the approved maintenance plan's NO_X motor vehicle emissions budget, USEPA also intends to require consistency with the attainment demonstration's NO_X motor vehicle emissions budget. However, the exemptions at issue were submitted pursuant to section 182(f)(3), and USEPA does not believe it is appropriate to delay action on these petitions, especially in light of the six-month statutory deadline provided for such action, until the conformity rule is amended. As noted above, this issue has also been raised in a formal petition for reconsideration of the Agency's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the

[5] There are three NO_X exemption tests specified in section 182(f). Of these, two are applicable for areas outside an ozone transport region; the ''contribute to attainment'' test described above, and the ''net air quality benefits'' test. The USEPA must determine, under the latter test, that the net benefits to air quality in an area ''are greater in the absence of NO_X reductions'' from relevant sources. Based on the plain language of section 182(f), USEPA believes that each test provides an independent basis for receiving a full or limited NO_X exemption. Consequently, as stated in section 1.4 of the December 16, 1993 USEPA guidance, ''(w)here any one of the tests is met (even if another test is failed), the section 182(f) NO_X requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply.''

[6] ''Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. of the Federal Transit Act,'' November 24, 1993 (58 FR 62188); ''Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rule,'' November 30, 1993 (58 FR 63214).

transportation and general conformity rules. Thus this issue is under consideration, but at this time the Agency's position remains as stated. The USEPA, therefore, believes that until the issue is resolved, the applicable rules governing this issue are those that appear in the Agency's final conformity regulations, and the Agency remains bound by their existing terms.

Conclusive Evidence Comment: The Act does not authorize any waiver of the NO_X reduction requirements until conclusive evidence exists that such reductions are counter-productive.

USEPA Response: The USEPA does not agree with this comment since it is contrary to Congressional intent as evidenced by the plain language of section 182(f), the structure of the Title I ozone subpart as a whole, and relevant legislative history. In developing and implementing its NO_X exemption policies, USEPA has sought an approach that reasonably accords with that intent.

Section 182(f), in addition to imposing control requirements on major stationary sources of NO_X similar to those that apply for such sources of VOC, also provides for an exemption (or limitation) from application of these requirements if, under one of several tests, USEPA determines that in certain areas NO_X reductions would generally not be beneficial. In subsection 182(f)(1), Congress explicitly conditioned action on NO_X exemptions on the results of an ozone precursor study required under section 185B. Because of the possibility that reducing NO_X in a particular area may either not contribute to ozone attainment or may cause the ozone problem to worsen, Congress included attenuating language, not just in section 182(f), but throughout the Title I ozone subpart, to avoid requiring NO_X reductions where they would be nonbeneficial or counterproductive.

In describing these various ozone provisions (including section 182(f), the House Conference Committee Report states in pertinent part: ''[T]he Committee included a separate NO_X/VOC study provision in section (185B) to serve as the basis for the various findings contemplated in the NO_X provisions. The Committee does not intend NO_X reduction for reduction's sake, but rather as a measure scaled to the value of NO_X reductions for achieving attainment in the particular ozone nonattainment area.'' H.R. Rep. No. 490, 101st Cong., 2d Sess. 257–258 (1990).

As noted in response to a comment discussed above, the command in subsection 182(f)(1) that USEPA ''shall consider'' the section 185B report taken together with the timeframe the Act provides both for completion of the report and for acting on NO_X exemption petitions clearly demonstrate that Congress believed the information in the completed section 185B report would provide a sufficient basis for USEPA to act on NO_X exemption requests, even absent the additional information that would be included in affected areas' attainment or maintenance demonstrations. However, while there is no specific requirement in the Act that USEPA actions granting NO_X exemption requests must await ''conclusive evidence,'' as the commenters argue, there is also nothing in the Act to prevent USEPA from revisiting an approved NO_X exemption if warranted due to subsequent ambient monitoring information.

In addition, USEPA believes (as described in USEPA's December 1993 guidance) that section 182(f)(1) of the Act provides that the new NO_X requirements shall not apply (or may by limited to the extent necessary to avoid excess reductions) if the USEPA Administrator determines that *any one* of the following tests is met:

(1) In any area, the net air quality benefits are greater in the absence of NO_X reductions from the sources concerned;

(2) In nonattainment areas not within an ozone transport region, additional NO_X reductions would not contribute to ozone attainment in the area; or

(3) In nonattainment areas within an ozone transport region, additional NO_X reductions would not produce net ozone air quality benefits in the transport region.

Based on the plain language of section 182(f), USEPA believes that each test provides an independent basis for the granting of a full or limited NO_X exemption. Only the first test listed above is based on a showing that NO_X reductions are ''counter-productive.'' If even one of the tests is met, the section 182(f) NO_X requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply.

Transboundary Pollution Comment: Several commenters noted that the Canada-U.S. Air Quality Agreement signed by the two countries on March 13, 1991, calls for each Party to notify the other of a proposed action, activity or project likely to cause significant transboundary air pollution, and, as appropriate, to take measures to avoid or mitigate the potential risk.

USEPA Response: The USEPA takes seriously international agreements entered into by our government. However, USEPA does not believe that the action of granting a NO_X exemption request would likely cause significant transboundary air pollution. The action to grant or deny these exemption requests will determine the amount of emission reductions, but not cause new or additional transboundary air pollution.

Air Quality Comment: Several commenters stated that the air quality monitoring data alone does not support this exemption proposal. The air quality levels are below USEPA's definition of an exceedance of the ozone NAAQS at 0.125 ppm, but are greater than the ozone NAAQS of 0.120 ppm.

USEPA Response: For the reasons provided below, USEPA does not agree with the commenter's conclusion. As stated in 40 CFR 50.9, the ozone ''standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 parts per million (235 $\mu g/m^3$) is equal to or less than 1, as determined by Appendix H.'' Appendix H references USEPA's ''Guideline for Interpretation of Ozone Air Quality Standards'' (EPA–450/4–79–003, January 1979), which notes that the stated level of the standard is taken as defining the number of significant figures to be used in comparison with the standard. For example, a standard level of 0.12 ppm means that measurements are to be rounded to two decimal places (0.005 rounds up to 0.01). Thus, 0.125 ppm is the smallest concentration value in excess of the level of the ozone standard (please refer to ''Section IV. Analysis of the State Submittal'' in this notice for monitored ozone concentrations in the Toledo and Dayton areas). The ambient air monitoring data shows that no violation of the ozone standard has occurred for the Toledo and Dayton areas during the 1991–1993 ozone seasons.

IX. Final Action

The USEPA is approving the exemption requests for the Toledo and Dayton ozone nonattainment areas from the section 182(f) NO_X requirements based upon the evidence provided by the State and the State's compliance with the requirements outlined in the applicable USEPA guidance. This action exempts the Lucas, Wood, Clark, Greene, Miami, and Montgomery counties from the requirements to implement NO_X RACT, nonattainment area NSR for new sources and modifications that are major for NO_X, and the NO_X-related general and transportation conformity provisions. Also, the Clark, Greene, Miami, and Montgomery counties shall not be required to demonstrate compliance

with the enhanced I/M performance standard for NO_X. If a violation of the ozone NAAQS occurs in the Toledo or Dayton area(s), the exemption from the requirements of section 182(f) of the Act in the applicable area(s) shall no longer apply.

X. Procedural Background

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget exempted this regulatory action from Executive Order 12866 review.

XI. Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Today's exemptions do not create any new requirements, but allow suspension of the indicated requirements for the life of the exemptions. Therefore, because the approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 20, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and record keeping requirements, Volatile organic compounds.

Dated: January 5, 1995.

Valdas V. Adamkus,

Regional Administrator.

Part 52, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Supart KK—Ohio

2. Section 52.1879 is amended by adding new paragraph (f) to read as follows:

§ 52.1879 Review of new sources and modifications.

* * * * *

(f) Approval—USEPA is approving two exemption requests submitted by the Ohio Environmental Protection Agency on September 20, 1993, and November 8, 1993, for the Toledo and Dayton ozone nonattainment areas, respectively, from the requirements contained in Section 182(f) of the Clean Air Act. This approval exempts the Lucas, Wood, Clark, Greene, Miami, and Montgomery Counties from the requirements to implement reasonably available control technology (RACT) for major sources of nitrogen oxides (NO_X), nonattainment area new source review (NSR) for new sources and modifications that are major for NO_X, and the NO_X-related requirements of the general and transportation conformity provisions. For the Dayton ozone nonattainment area, the Dayton local area has opted for an enhanced inspection and maintenance (I/M) programs. Upon final approval of this exemption, the Clark, Greene, Miami, and Montgomery Counties shall not be required to demonstrate compliance with the enhanced I/M performance standard for NO_X. If a violation of the ozone NAAQS is monitored in the Toledo or Dayton area(s), the exemptions from the requirements of Section 182(f) of the Act in the applicable area(s) shall no longer apply.

3. Section 52.1885 is amended by adding new paragraph (r) to read as follows:

§ 52.1885 Control Strategy: Ozone.

* * * * *

(r) Approval—USEPA is approving two exemption requests submitted by the Ohio Environmental Protection Agency on September 20, 1993, and November 8, 1993, for the Toledo and Dayton ozone nonattainment areas, respectively, from the requirements contained in Section 182(f) of the Clean Air Act. This approval exempts the Lucas, Wood, Clark, Greene, Miami, and Montgomery Counties from the requirements to implement reasonably available control technology (RACT) for major sources of nitrogen oxides (NO_X), nonattainment area new source review (NSR) for new sources and modifications that are major for NO_X, and the NO_X-related requirements of the general and transportation conformity provisions. For the Dayton ozone nonattainment area, the Dayton local area has opted for an enhanced inspection and maintenance (I/M) program. Upon final approval of this exemption, the Clark, Greene, Miami, and Montgomery Counties shall not be required to demonstrate compliance with the enhanced I/M performance standard for NO_X. If a violation of the ozone NAAQS is monitored in the Toledo or Dayton area(s), the exemptions from the requirements of Section 182(f) of the Act in the applicable area(s) shall no longer apply.

[FR Doc. 95–1254 Filed 1–18–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[WY–001; FRL–5134–4]

Clean Air Act Final Interim Approval of Operating Permits Program; State of Wyoming

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits Program submitted by the State of Wyoming for the purpose of complying with Federal requirements for an approvable State Program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: February 21, 1995.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency,

Region 8, 999 18th Street, suite 500, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Laura Farris, 8ART–AP, U.S. Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202, (303) 294–7539.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 (part 70) require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

On September 23, 1994, EPA published a direct final rule in the Federal Register promulgating interim approval of the Operating Permits Program for the State of Wyoming (PROGRAM). See 59 FR 48802. The EPA received adverse comments on the direct final rule, which are summarized and addressed below. As stated in the Federal Register notice, if adverse or critical comments were received by October 24, 1994, the effective date would be delayed and timely notice would be published in the Federal Register. Therefore, due to receiving adverse comments within the comment period, EPA withdrew the final rule (59 FR 60561, Nov. 25, 1994), and a proposed rule also published in the Federal Register on September 23, 1994 served as the proposed rule for this action. EPA will not institute a second comment period on this document.

In this rulemaking EPA is taking final action to promulgate interim approval of the Wyoming PROGRAM, and correct a typographical error contained in 59 FR 48802 (see section II.B. below).

II. Final Action and Implications

A. Analysis of State Submission

The Governor of Wyoming submitted an administratively complete title V Operating Permit Program for the State of Wyoming on November 19, 1993. The Wyoming PROGRAM, including the operating permit regulations (Section 30 of the Wyoming Air Quality Standards and Regulations (WAQSR)), substantially meets the requirements of 40 CFR 70.2 and 70.3 with respect to applicability; 40 CFR 70.4, 70.5, and 70.6 with respect to permit content including operational flexibility; 40 CFR 70.5 with respect to complete application forms and criteria which define insignificant activities; 40 CFR 70.7 with respect to public participation and minor permit modifications; and 40 CFR 70.11 with respect to requirements for enforcement authority.

A letter sent to the State dated May 10, 1994, identified areas in which the Wyoming PROGRAM was deficient and the corrective actions that were to be completed either prior to interim PROGRAM approval or prior to full PROGRAM approval. In a letter dated June 7, 1994, which included an Attorney General's opinion dated June 6, 1994, the State addressed all EPA issues that would have prevented EPA from issuing interim approval of the Wyoming PROGRAM. The State must address those issues that require corrective action prior to full PROGRAM approval within 18 months of EPA's interim approval of the Wyoming PROGRAM.

At the time of this notice, the State had not made an affirmative showing of legal authority to regulate sources within the exterior boundaries of Indian Reservations in Wyoming under the Act. Therefore, interim approval of the Wyoming PROGRAM will not extend to lands within the exterior boundaries of Indian Reservations. Until the State makes such a showing, part 70 sources within the exterior boundaries of Indian Reservations in Wyoming will be subject to the federal operating permit program to be promulgated in 40 CFR part 71, or subject to the program of any Tribe delegated such authority under section 301(d) of the Act. The EPA anticipates promulgating an Indian Air Regulation, at which time how the State defines Indian lands could become an approval issue.

B. Response to Comments

The comments received on the September 23, 1994 direct final rule in the Federal Register promulgating interim approval of the Wyoming PROGRAM, and EPA's response to those comments, are as follows:

Comment #1: The commenter objected to EPA's proposed approval of Wyoming's preconstruction permitting program for purpose of implementing section 112(g) of the Act during the transition period between title V program approval and adoption of a State rule implementing EPA's section 112(g) regulations. The commenter argued that there is no legal basis for delegating to Wyoming the section 112(g) program until EPA has promulgated a section 112(g) regulation and the State has a section 112(g) program in place. In addition, the commenter argued that the Wyoming program fails to address critical threshold questions of when an emission increase is greater than de minimis and when, if it is, it has been offset satisfactorily.

EPA Response: EPA disagrees with the commenter's contention that section 112(g) cannot take effect until after EPA has promulgated implementing regulations. The statutory language in section 112(g)(2) prohibits the modification, construction, or reconstruction of a hazardous air pollutant (HAP) source after the effective date of a title V program unless maximum achievable control technology (MACT) (determined on a case-by-case basis, if necessary) is met. The plain meaning of this provision is that implementation of section 112(g) is a title V requirement of the Act and that the prohibition takes effect upon EPA's approval of the State's PROGRAM regardless of whether EPA or a state has promulgated implementing regulations.

The EPA has acknowledged that states may encounter difficulties implementing section 112(g) prior to the promulgation of final EPA regulations and has provided guidance on the 112(g) process (see April 13, 1993 memorandum entitled, ''Title V Program Approval Criteria for Section 112 Activities'' and June 28, 1994 memorandum entitled, ''Guidance for Initial Implementation of Section 112(g),'' signed by John Seitz, Director of the Office of Air Quality Planning and Standards.) In addition, EPA has issued guidance, in the form of a proposed rule, which may be used to determine whether a physical or operational change at a source is not a modification either because it is below de minimis levels or because it has been offset by a decrease of more hazardous emissions. See 59 FR 15004 (April 1, 1994). EPA believes the proposed rule provides sufficient guidance to Wyoming and its sources until such time as EPA's section 112(g) rulemaking

is finalized and subsequently adopted by the State.

The EPA is aware that Wyoming lacks a program designed specifically to implement section 112(g). However, Wyoming does have a preconstruction review program that can serve as a procedural vehicle for establishing a case-by-case MACT or offset determination and making these requirements federally enforceable. The EPA approval of Wyoming's preconstruction review program clarifies that it may be used for this purpose during the transition period to meet the requirements of section 112(g).

The EPA believes that Wyoming's preconstruction review program will be adequate because it will allow Wyoming to select control measures that would meet MACT, as defined in section 112 of the Act, and incorporate these measures into a federally enforceable preconstruction permit. Wyoming's preconstruction permitting program allows permit requirements to be established for all air contaminants (which is broadly defined at Section 21 of the WAQSR) and includes all of the HAPs listed in Section 112(b) of the Act.

Another consequence of the fact that Wyoming lacks a program designed specifically to implement section 112(g) is that the applicability criteria found in its preconstruction review program may differ from the criteria in section 112(g). EPA will expect Wyoming to utilize the statutory provisions of section 112(g) and the proposed rule as guidance in determining when case-by-case MACT or offsets are required. As noted in the June 28, 1994 guidance, EPA intends to defer wherever possible to a State's judgement regarding applicability determinations. This deference must be subject to obvious limitations. For instance, a physical or operational change resulting in a net increase in HAP emissions above 10 tons per year could not be viewed as a de minimis increase under any interpretation of the Act. The EPA would expect Wyoming to be able to issue a preconstruction permit containing a case-by-case determination of MACT in such a case even if review under its own preconstruction review program would not be triggered.

Comment #2: The commenter questioned the need for Wyoming's title V program enforcement authority to be based on State law defining civil individual and corporate liability and asserted that EPA's requirement that the State program include strict liability for corporate officers, directors or agents in civil actions is not compelled by the Clean Air Act Amendments of 1990.

EPA Response: The Wyoming Environmental Quality Act (WEQA) states in section 35–11–901(a) that ''Any person who violates, or any director, officer or agent of a corporate permittee who willfully and knowingly authorizes, orders or carries out the violation of any provision of this act * * * is liable to either a penalty of not to exceed ten thousand dollars ($10,000.00) for each day during which violation continues * * *.'' On its face, section 35–11–901(a) establishes a more stringent burden of proof for civil violations for corporate directors, officers, or agents than for other persons. Based on EPA's position that this distinction is inconsistent with title V of the Act and part 70, EPA stated in the Federal Register notice proposing interim approval of the Wyoming PROGRAM that section 35–11–901(a) needs to be revised to include language that provides strict liability for corporate officers, directors or agents in civil actions.

The commenter stated that ''the federal statutory standard for approval of state permit programs does not require strict corporate liability in civil actions. Under 42 U.S.C. 7661a(b)(5)(E), Congress mandated only that states seeking approval of permit programs have ''adequate authority'' to ''enforce permits * * * including authority to recover civil penalties in a maximum amount of not less than $10,000 per day of violation.'' There is nothing in the State's statutory or regulatory scheme that suggests that Wyoming lacks either the will or the ability to impose civil penalties to enforce operating permits, as mandated by the Act. EPA's insistence on statute revision is, therefore, an example of Agency overreaching.''

However, section 502(b)(5)(E) of the Act requires the EPA to promulgate ''* * * regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency. These elements shall include each of the following: * * * (5) A requirement that the permitting authority have adequate authority to: * * * (E) enforce permits, permit fee requirements, and the requirement to obtain a permit, including authority to recover civil penalties in a maximum amount of not less than $10,000 per day for each violation, and appropriate criminal penalties * * *.''

Pursuant to section 502(b)(5)(E), EPA promulgated 40 CFR 70.11(a)(3) which requires that the state's part 70 programs contain the enforcement authority ''To assess or sue to recover in court civil penalties * * * according to the following: (i) Civil penalties shall be recoverable for the violation of any applicable requirement; any permit condition; any fee or filing requirement; any duty to allow or carry out inspection, entry or monitoring activities or, any regulation or orders issued by the permitting authority. These penalties shall be recoverable in a maximum amount of not less than $10,000 per day per violation. State law shall not include mental state as an element of proof for civil violations.''

It is well established that the Act imposes a strict liability standard for assessing compliance violations. *United States* v. *JBA Motorcars,* 839 F. Supp. 1572 (D.C.Fla. 1993). Further, strict liability is essential to meet the purpose of the Act to protect and improve the quality of the nation's air. *United States* v. *B & W Investment Properties,* No. 94–1892, (7th Cir. Oct. 24, 1994), LEXIS 29713.

Wyoming's provision which requires a mental state as an element of proof for corporate civil violations is inconsistent with the general purpose of the Act. More specifically, Wyoming's provision is inconsistent with the basic framework for effective enforcement of the title V program established at 40 CFR 70.11(a)(3)(i) which does not distinguish between corporate and personal liability. The commenter's objection to a requirement clearly articulated in part 70 should have been raised in a challenge to the rule itself, rather than in the context of an action to approve a state program pursuant to that rule. Finally, it is EPA's view that requiring a mental state as an element of proof for civil violations significantly hinders corporate compliance enforcement. As such, the provisions are insufficient to meet section 40 CFR 70.4(b)(3)(i) which requires Wyoming to issue permits and assure compliance with each applicable requirement and the requirements of part 70.

Based on the above, it is EPA's position that section 35–11–901(a) of the WEQA must be revised to require strict liability for civil violations for corporate entities. Because this provision is inconsistent with the Act and the regulations thereunder and adversely affects the Permitting Authority's ability to enforce title V requirements against corporate entities, this issue is a basis for granting Wyoming interim approval for the PROGRAM. Accordingly, Wyoming's PROGRAM must be revised to reflect strict liability for corporate entities to receive full PROGRAM approval.

Comment #3: The commenter objected to EPA's proposed action related to Wyoming's special rule exempting Research and Development (R&D) facilities and contended that EPA has not offered a compelling basis for

changing the Agency's current rules governing R&D facilities.

EPA Response: The part 70 final rule (57 FR 32250, July 21, 1992) provides no special treatment or exemption from applicability for R&D facilities. The preamble to the proposed part 70 rule took comment on how to interpret the section 501(2) definition of ''major source'' (see 56 FR 21724, May 10, 1991). The preamble included a statement that aggregation of sources by Standard Industrial Classification (SIC) code at the source site to determine whether a source would be major is the approach intended by Congress and that aggregation by SIC code should be done in a manner consistent with New Source Review (NSR) procedures. The preamble further clarified that NSR procedures include the requirement that any equipment used to support the main activity at a site would also be considered as part of the same major source regardless of the 2-digit SIC code for that equipment.

The preamble to the final rule (57 FR 32264) stated that ''Although EPA is not exempting R&D operations from title V requirements at this time, in many cases states will have the flexibility to treat an R&D facility as separate from the manufacturing facility with which it is co-located.'' EPA wishes to clarify that this is the case only where the R&D facility is not a support facility. If the R&D facility is a support facility (co-located with a separate source, under common ownership or control and 50% of the output of the R&D facility was used by the main activity), the emissions from this R&D facility must be included, along with all other emissions at the source, to determine if the source is ''major'' and thus applicable to Section 30 of the Wyoming rule. Prior to full PROGRAM approval, Wyoming must revise their rule to be consistent with part 70.

Comment #4: The commenter objected to EPA's dismissal of the Wyoming variance provision as not having any effect on the compliance requirements of the source or on enforcement actions against a source that has obtained such a variance from the State.

EPA Response: The EPA recognizes that Wyoming has the authority to use variances as a mechanism for establishing compliance schedules. The EPA wishes to clarify that it cannot recognize procedures for the issuance of state variances in the title V program and that, although the terms of a variance may be incorporated into a title V permit as a compliance schedule, a title V compliance schedule does not sanction noncompliance with an applicable requirement. Wyoming has the responsibility under title V to establish a compliance schedule for sources that are out of compliance and place that schedule into the permit. The title V compliance schedule is properly established through appropriate enforcement action and not necessarily through variances. Wyoming does not need to take any action on this provision as it has not been identified as an approval issue.

Comment #5: The commenter objected to EPA's decision to grant interim approval to a program that does not provide emission trading under a permit cap in accordance with 40 CFR 70.4(b)(12)(iii) and contends that EPA has no authority to grant interim approval to any program that lacks this authority.

EPA Response: The EPA agrees that Wyoming must provide emission trading under a permit cap in its part 70 program. The EPA has determined that this deficiency is an issue that must be corrected before full approval may be granted and that this deficiency does not interfere with the EPA's ability to grant interim approval. 40 CFR 70.4(d)(3)(viii) requires that programs provide operational flexibility consistent with 40 CFR 70.4(b)(12) before the program may be granted interim approval. The EPA notes that the Wyoming program does implement another required type of operational flexibility, 40 CFR 70.4(b)(12)(i). In addition, Wyoming has submitted a letter, dated November 16, 1994, which clarifies their authority to provide emission trading under a permit cap. Specifically, the State's November 1994 letter stated that Sections 30(h)(i)(H) and 30(h)(i)(J) of the State's operating permit regulations provide authority for the State to issue permits ''allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of otherwise applicable requirements.'' Thus, the State has provided clear authority to implement emissions trading under a permit cap. The EPA has determined that the Wyoming PROGRAM substantially meets the requirements of 40 CFR 70.4(b)(12) because it implements the mandatory operational flexibility provision of 40 CFR 70.4(b)(12)(i) and has adequate authority to issue permits to implement 40 CFR 70.4(b)(12)(iii).

Comment #6: The commenter stated that they did not have a problem with the way ''prompt'' is defined for deviation reporting in the Wyoming program but added that they did have a problem with the way the definition has been handled in other interim approval notices.

EPA Response: The Wyoming PROGRAM allows the State to define ''prompt'' for deviation reporting in each individual permit. Since the commenter did not have a problem with the way ''prompt'' reporting of deviations is handled in Wyoming, EPA will not respond to that comment. In addition, it would be inappropriate in this notice to comment on how the definition of ''prompt'' was handled in notices for other states' part 70 approvals.

Comment #7: The commenter noted a typographical error in the Federal Register notice proposing interim approval of the Wyoming PROGRAM (59 FR 48802) on page 48804 under paragraph #4 titled ''Provisions Implementing the Requirements of Other Titles of the Act.'' Part b of this paragraph titled ''Implementation of 112(g) Upon Program Approval'' refers to Wyoming's preconstruction permitting program found in section 24, which is an incorrect reference. The correct reference to the Wyoming preconstruction permitting program should be section 21.

EPA Response: The reference to section 24 was incorrect and should have read ''section 21''.

C. Final Action

The EPA is promulgating interim approval of the operating permits program submitted by the State of Wyoming on November 19, 1993. The State must make the following changes to receive full approval: (1) Section 30(a)(ix) must be revised to assure R&D support facilities are included in major source determinations; (2) Sections 35–11–901(a), (m) and (n) of the WEQA, which appear to reduce the penalty for civil violations committed by surface coal mine operations from a maximum of ten thousand dollars per day to five thousand dollars per day, must be revised, or clarified in an Attorney General's Opinion, to indicate that the five thousand dollar penalty relates only to activities subject to the Surface Mining Control and Reclamation Act; (3) Section 35–11–901(a) of the WEQA must be revised to include language that provides strict liability for corporate officers, directors or agents in civil actions; (4) Section 35–11–901(j) of the WEQA must be revised to provide for a per day, per violation penalty for false statements or tampering with monitoring devices; (5) Section 30(c)(ii)(A)(III)(1) must be revised to include language similar to the general provision in 40 CFR 70.5(c), or the State must provide an Attorney General's

opinion, to clarify that the State will ensure that all applicable requirements are identified for any insignificant activities; (6) Section 30(i)(ii) regarding general permits must be revised, or the State must provide an Attorney General's Opinion, to clarify the public notice and comment requirements for general permits; (7) In the Federal Register notice proposing interim approval of the Wyoming PROGRAM, EPA stated that, prior to full PROGRAM approval, the State must clarify that Section 30(h)(i)(J) provides the State with authority to implement emissions trading under a permit cap, which is required by 40 CFR 70.4(b)(12)(iii), or revise Section 30 to provide such authority. In a letter dated November 16, 1994, the State of Wyoming clarified that it has the authority to implement the emissions trading under permit caps provision of 40 CFR 70.4(b)(12)(iii). EPA concurs with the State's authority to implement this provision; however, we are currently reevaluating the State's regulations to determine if a regulatory revision is also needed, prior to full PROGRAM approval, to assure consistency with the provisions of 40 CFR 70.4(b)(12)(iii); (8) The State must provide a definition of ''Indian lands.''

Refer to the technical support document accompanying this rulemaking for a detailed explanation of each PROGRAM deficiency.

This interim approval, which may not be renewed, extends until February 19, 1997. During this interim approval period, the State of Wyoming is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal operating permits program in the State of Wyoming. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If the State of Wyoming fails to submit a complete corrective program for full approval by August 19, 1996, EPA will start an 18-month clock for mandatory sanctions. If the State of Wyoming then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the State of Wyoming has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the State of Wyoming, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determined that the State of Wyoming had come into compliance. In any case, if, six months after application of the first sanction, the State of Wyoming still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves the State of Wyoming's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State of Wyoming has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of the State of Wyoming, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that the State of Wyoming has come into compliance. In all cases, if, six months after EPA applies the first sanction, the State of Wyoming has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if the State of Wyoming has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to the State of Wyoming program by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for the State of Wyoming upon interim approval expiration.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

III. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final interim approval, including public comments received and reviewed by EPA on the proposal, are maintained in a docket at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR Part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: December 27, 1994.

Kerrigan G. Clough,

Acting Regional Administrator.

Part 70, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

2. Appendix A to part 70 is amended by adding the entry for Wyoming in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Wyoming

(a) Department of Environmental Quality: submitted on November 19, 1993; effective on February 21, 1995;

interim approval expires February 19, 1997.

(b) Reserved.

[FR Doc. 95–928 Filed 1–18–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 81

[CA–103–1–6722 FRL–5125–2]

Designation of Areas for Air Quality Planning Purposes; State of California; Correction of Design Value for San Diego Ozone Nonattainment Area; Reclassification of San Diego Ozone Nonattainment Area to Serious

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document announces the EPA Region IX decision to reclassify the San Diego, California, ozone nonattainment area (San Diego) from severe to serious. San Diego was classified as a severe ozone nonattainment area by EPA on November 6, 1991 (56 FR 56694). However, EPA has determined that the ozone design value of .190 ppm published by EPA and used in classifying San Diego as a severe ozone nonattainment area was incorrect. The correct monitored ozone design value was .185 ppm. This design value falls within the range of values which would have provided the opportunity for the State to request reclassification of San Diego under section 181(a)(4) of the Clean Air Act, as amended in 1990 (CAA or the Act). Pursuant to section 110(k) of the Act, which allows EPA to correct its actions, EPA is today publishing the correct design value of .185 ppm and is granting the State's request to reclassify the San Diego nonattainment area under section 181(a)(4).

EFFECTIVE DATE: February 21, 1995.

FOR FURTHER INFORMATION CONTACT: Angela Baranco, Plans Development Section (A–2–2), Air Planning Branch, United States Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California, 94105, (415) 744–1196.

SUPPLEMENTARY INFORMATION:

Background

Prior to the 1990 amendments to the Act, EPA identified and designated nonattainment areas with respect to the National Ambient Air Quality Standards (NAAQS). For such areas, States submitted State Implementation Plans (SIPs) to control emissions and achieve attainment of the NAAQS. The San Diego ozone nonattainment area (San Diego) was originally designated as nonattainment for ozone on March 3, 1978 (as well as for other pollutants not addressed in this document). The SIP for San Diego was first adopted in the early 1970's. The revised SIP was fully approved by EPA on November 25, 1983 (48 FR 53114) and December 28, 1983 (48 FR 57130).

Under the 1990 amendments to the Act, San Diego retained its designation of nonattainment and was classified as severe by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991). This classification was required to be based on the design value for the area. The actual monitored value for San Diego was .185 ppm. This value was reported to the California Air Resources Board (CARB), which rounded the value to .19 ppm and submitted it to EPA. EPA published this number as .190 ppm in its November 6, 1991 Federal Register document.

CAA Provisions

A. Correction of Error Under Section 110(k)(6)

Section 110(k)(6) of the Act provides:

> Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

EPA interprets this provision to authorize the Agency to make corrections to a promulgation when it is shown to EPA's satisfaction that: (1) EPA erred in failing to consider or inappropriately considered information made available to EPA at the time of the promulgation, or the information made available at the time of promulgation is subsequently demonstrated to have been clearly inadequate; and (2) other information persuasively supports a change in the promulgation.

EPA's initial action in classifying San Diego was based on an ozone design value of .190 ppm. That information was subsequently demonstrated to have been incorrect, and the true design value was .185 ppm. Accordingly, in today's action, EPA is correcting this error by publishing the correct design value of .185 ppm for San Diego.

B. Classification Adjustment Under Section 181(a)(4)

Section 181(a)(4) of the Act provides a 90-day period following publication of a classification during which any nonattainment area with a design value within 5 percent of the next higher or lower classification may request to be reclassified. When EPA published .190 ppm as the ozone design value, the San Diego planning staff concluded it could not take advantage of the five-percent classification adjustment provision because this value does not fall within 5 percent of the cutoff for classification as serious. However, the correct value of .185 ppm does fall within 5 percent of this number (.179 ppm). When the discrepancy in the ozone design values was discovered, the State requested that EPA reclassify San Diego. After determining that the original classification had been based on an erroneous design value, and that the error may be corrected pursuant to section 110(k)(6), EPA accepted the State's request, made by letter dated July 19, 1993, to reclassify the San Diego ozone nonattainment area from severe to serious under section 181(a)(4).

C. Criteria for Reclassification

Section 181(a)(4) of the CAA provides general guidelines to determine whether an area qualifies for a classification adjustment:

> In making such adjustment, the Administrator may consider the number of exceedances of the (NAAQS) for ozone in the area, the level of pollution transport between the area and other affected areas, including both intrastate and interstate transport, and the mix of sources and air pollutants in the area.

EPA interprets this provision to mean that the area must demonstrate that it can attain the ozone NAAQS by the earlier date required by the lower classification. As discussed in more detail in subsection 3 below, San Diego has submitted a preliminary demonstration that ''but for transport'', it would attain the ozone NAAQS by the 1999 attainment deadline for serious areas. Documentation concerning each of the section 181(a)(4) criteria has been submitted by San Diego as part of this demonstration and is discussed briefly below. For a detailed discussion and analysis of these submissions please refer to EPA's Technical Support Document (TSD).

1. Exceedances

San Diego submitted data concerning the number of exceedances per year from 1980 to 1992. This data shows a clear downward trend projecting zero exceedances in 1999.

2. Pollution Sources

San Diego provided information regarding the mix of sources and air pollutants which shows that on-road motor vehicle emissions are projected to decline through 1999 and beyond, and that other anthropogenic emissions will remain more or less constant. Based on these projections, motor vehicle emissions should not undermine San Diego's overall downward trends for both short and long term emissions.

3. Attainment Demonstration and Transport

In initial responses to requests for reclassification under section 181(a)(4), EPA required that an area under consideration for a classification downwards show that it would attain the NAAQS by the earlier attainment deadline, including transported emissions from upwind areas. However, EPA has recently issued guidance that allows attainment date extensions for downwind nonattainment areas which are overwhelmingly affected by transported pollutants from nonattainment areas of higher classifications, and which would otherwise attain the NAAQS for ozone (''Ozone Attainment Dates for Areas Affected by Overwhelming Transport'', Mary D. Nichols, Assistant Administrator for Air and Radiation, September 1, 1994). Under the new policy, a downwind area must demonstrate attainment of the NAAQS for locally generated ozone episodes by the attainment date specified by its new classification and demonstrate attainment under transport conditions except for transported pollutants.

San Diego has provided a credible preliminary showing that it meets the requirements for demonstrating attainment by 1999 or locally generated ozone episodes and under transport conditions except for transported pollutants. This showing contained data showing overwhelming transport from the South Coast Air Basin, including a detailed discussion of San Diego's transport assessment methodology. San Diego also submitted preliminary documentation of modeling being prepared for its November 15, 1994 attainment demonstration. San Diego has modeled both a local and a transport ozone episode using the Urban Airshed Model (UAM). This preliminary showing demonstrates that San Diego will attain the ozone NAAQS ''but for'' transported emissions by 1999. For an in-depth discussion and analysis of San Diego's preliminary showing, refer to EPA's technical support document.

4. Other Factors

Discontinuity: A 5-percent classification downwards must not result in an illogical or excessive discontinuity relative to surrounding areas. In particular, in light of the area-wide nature of ozone formation, a classification downwards should not create a ''donut hole'' where an area of one classification is surrounded by areas of higher classification. The San Diego nonattainment area is bordered by the South Coast air district, an ''extreme'' ozone nonattainment area which transports emissions to San Diego from the north and west, and by the Imperial County air district, which is a ''transitional'' ozone nonattainment area. A serious classification falls between the classifications of the surrounding areas, and thus does not constitute discontinuity.

5. Affect on November 15, 1994 Attainment Demonstration

The State must submit a full attainment demonstration (including transport) for San Diego on November 15, 1994, as required by the Clean Air Act. This demonstration must be in accord with all generally applicable requirements of section 110 of the Act, the requirements of section 182(c)(2)(A), and the EPA policy memo ''Ozone Attainment Dates for Areas Affected by Overwhelming Transport'' issued by Mary Nichols on September 1, 1994. This SIP submission will be reviewed in its entirety when submitted.

EPA's action today reclassifying San Diego does not constitute approval of the attainment demonstration which is due on November 15, 1994, and EPA does not by this action take a position concerning the approvability of the emission inventory, modelling, or control measures relied upon in the preliminary attainment demonstration.

Today's Action

A. Final Action

In the Federal Register of November 6, 1991 (56 FR 56694), EPA issued a final rule promulgating the designations, boundaries, and classifications of ozone nonattainment areas (and for nonattainment areas for other pollutants not addressed in this action). In today's action, EPA is correcting its action, with respect to the publication of the .190 ppm ozone design value for San Diego and publishing the actual monitored value of .185 ppm in accordance with section 110(k)(6). In addition, EPA is reclassifying San Diego as a serious ozone nonattainment area pursuant to section 181(a)(4).

In accordance with CAA sections 107(d)(2)(B), 110(k)(6), 172(a)(1)(B), and 181(a)(3) and (a)(4), this document is a final publication of the ozone design value for San Diego and of the reclassification of San Diego to a serious ozone nonattainment area, and is not subject to the notice and comment provisions of sections 553 through 557 of Title 5.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: December 13, 1994.

Carol Browner,

Administrator.

Therefore, 40 CFR part 81 is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.305 the table for ''California—Ozone'' is amended by revising the entry ''San Diego Area'' to read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA—OZONE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * *	*	*	*	*
San Diego Area	.....	.....	.....	
San Diego County	.....	Nonattainment	.....	Serious.
* * *	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 95–1317 Filed 1–18–95; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[GN Docket No. 93–252, PR Docket No. 89–553; FCC 94–331]

Implemenation of Sections 3(n) and 332 of the Communications Act

AGENCY: Federal Communications Commission.

ACTION: Final Rule; Order on reconsideration.

SUMMARY: This Order on Reconsideration in GN Docket No. 93–252 and PR Docket No. 89–553 is a partial reconsideration of the Third Report and Order in GN Docket No. 93–252, (''*CMRS Order*''). In this reconsideration, the Commission decides not to suspend granting of secondary site authorizations for incumbent 900 MHz Specialized Mobile Radio (''SMR'') systems, as originally determined in the CMRS Order. In the CMRS Order, the Commission decided not to grant any further secondary site authorizations, which would have allowed existing 900 MHz SMR operators to construct facilities outside of their Designated Filing Areas (''DFAs''), enabling them to expand their systems or link facilities in different markets. The Commission had reasoned that, even though these secondary sites would not be entitled to protection from co-channel interference and may have to discontinue operation eventually, it would contaminate the 900 MHz band to continue to license secondary sites in advance of Major Trading Area (''MTA'') licensing. On reconsideration, however, the Commission concludes that such an outright prohibition on further secondary site licensing imposes a significant burden on existing 900 MHz SMR licensees that are building out their systems and intend to become MTA licensees, which would also delay the availability of service to customers. Also, the Commission emphasizes that secondary site operators assume the risk of having to discontinue operations in the event of interference to an MTA-licensed system. Thus, the Commission will continue to process and grant secondary site authorizations to qualified applicants.

FOR FURTHER INFORMATION CONTACT: Amy J. Zoslov at (202) 418–0620, Wireless Telecommunications Bureau, Commercial Radio Division.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission Order on Reconsideration in GN Docket No. 93–252 and PR Docket No. 89–553, adopted December 21, 1994, and released December 22, 1994. The full text of this Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Synopsis of Order on Reconsideration

1. The Order, taken on the Commission's own motion, reverses the Commission's decision in the CMRS Order, 59 FR 59945 (11/21/94), to suspend further granting of secondary site authorizations for 900 MHz SMR systems pending the implementation of new service and licensing rules for those SMR systems.

2. By way of background, the Commission adopted new licensing rules for this service in the CMRS Order, dividing 200 channels into 20 blocks of 10 channels each, using MTAs as the service area for each license, and using competitive bidding selection for mutually exclusive applications. The incumbent systems already licensed in the DFAs (which correspond to the top 50 major markets) were grandfathered, i.e., given co-channel interference protection for existing facilities, but were not allowed to expand beyond existing service areas unless they obtained MTA licenses. Some incumbents had been granted authorizations to construct facilities outside their DFAs to expand their systems or link facilities in different markets, which became ''secondary sites,'' i.e., not entitled to co-channel interference protection, when the Commission discontinued primary site licensing in 1986. The CMRS Order established that any 900 MHz SMR secondary sites licensed before August 10, 1994, would be entitled to primary site protection, so as to avoid discontinuation of operations for such sites that had become integral to the existing systems. In this connection, the Commission decided not to license any further secondary sites to avoid contamination of the 900 MHz band in advance of MTA licensing.

3. In this Order, the Commission concludes that an outright prohibition on further licensing of secondary sites imposes a significant burden on 900 MHz incumbents who are building out systems and who intend to become MTA licensees. A suspension of licensing would delay service to consumers until the new 900 MHz rules are adopted and selection of licensees takes place. Also, as secondary sites are not entitled to interference protection, and secondary site-holders assume the risk of discontinuation, the Commission concludes that this policy will not contribute to spectrum contamination. Thus, the Commission will continue to grant secondary site authorizations to qualified SMR applicants in the 900 MHz band, subject to strict enforcement of the no-interference policy regarding secondary operation, defined in 47 CFR 90.7.

List of Subjects in 47 CFR Part 90

Administrative practice and procedure, Radio.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 95–1219 Filed 1–18–95; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 94–57; Notice 02]

RIN 2127–AF33

Federal Motor Vehicle Safety Standards; Seat Belt Assembly Anchorages

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends Standard No. 210, *Seat Belt Assembly Anchorages,* to eliminate the sole exception to the requirement in paragraph S4.1.2 for the installation of anchorages for either a Type 1 or a Type 2 seat belt assembly at any designated seating position for which Standard No. 208, *Occupant Crash Protection*, requires the installation of a Type 1 or a Type 2 seat belt. The sole exception is for passenger seats in buses. The practical effect of Standard No. 210's not requiring anchorages for the bus passenger seats is that the anchorages for the Type 1 seat belt assemblies required at passenger seats in small buses are not currently required to comply with the strength, location and other performance requirements of Standard No. 210. This final rule will correct this oversight.

DATES: Effective Date: The amendments made in this rule are effective on February 21, 1995.

Petition Date: Any petitions for reconsideration must be received by NHTSA no later than February 21, 1995.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Clarke Harper, Office of Vehicle Safety Standards, NRM–12, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–4916.

SUPPLEMENTARY INFORMATION: On July 13, 1994, NHTSA published a notice of proposed rulemaking (NPRM) proposing to require the installation of anchorages for either a Type 1 or a Type 2 seat belt assembly at any seating position for which Standard No. 208 requires the installation of a Type 1 or a Type 2 seat belt (59 FR 35670). As explained in the NPRM, NHTSA believed this amendment was necessary to correct an oversight in a final rule published on November 2, 1989. That final rule amended Standard No. 208, *Occupant Crash Protection*, to require, among other changes, Type 2 (lap/shoulder) seat belts at all front outboard seating positions in small buses and Type 1 (lap) seat belts at all other seating positions in small buses (54 FR 46257).

In the preamble to the final rule, the agency stated that it did not need to make corresponding amendments to Standard No. 210, *Seat Belt Assembly Anchorages,* to require the installation of anchorages. Anchorages required by Standard No. 210 must meet the strength, location and other performance requirements of that standard. In making this statement, the agency overlooked the exceptions in S4.1.2 of Standard No. 210. That section requires the installation of anchorages for a Type 1 or a Type 2 seat belt assembly for all designated seating positions, except positions required to have an anchorage for a Type 2 seat belt assembly and except for passenger seats in buses. Thus, the anchorages for the Type 1 seat belt assemblies required at passenger seats in small buses by the November 2, 1989 final rule are not currently required to comply with Standard No. 210. The NPRM was intended to correct this oversight.

The agency received three comments on this NPRM. All of the commenters concurred with the suggested amendment with one comment. The comment from Ford Motor Company concerned an error in another final rule which omitted the term ''forward-facing'' from section S4.1.5.1(a)(3) of Standard No. 208. That error was corrected in a separate final rule published on November 29, 1994 (59 FR 60917). As none of the comments addressed issues associated with the July 13 NPRM, NHTSA is adopting the amendments as proposed.

In the NPRM, NHTSA proposed to make the amendment effective 30 days after publication, since NHTSA believed that the anchorages currently being installed by the manufacturers comply with the requirements of Standard No. 210. One commenter specifically addressed this issue and agreed that its products already complied with Standard No. 210's requirements. Therefore, this final rule will be effective 30 days after publication.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' NHTSA has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures and determined that the action is not ''significant'' under those policies and procedures. While these anchorages are not currently required to comply with Standard No. 210, commenters did not disagree with NHTSA's stated belief that manufacturers do design these anchorages to comply with these requirements. Therefore, NHTSA does not expect any impact from this rule and concludes that preparation of a full regulatory evaluation is not warranted.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As explained above, NHTSA does not anticipate any impact from this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), NHTSA notes that there are no requirements for information collection associated with this final rule.

National Environmental Policy Act

NHTSA has also analyzed this final rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety

standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.210 is amended by revising S4.1.1, removing existing S4.1.2, redesignating existing S4.1.3(a) as S4.1.2(a), and revising existing S4.1.3(b) and redesignating it as S4.1.2(b) to read as follows:

§ 571.210 Standard No. 210, Seat Belt Assembly Anchorages.

* * * * *

S4.1.1 Seat belt anchorages for a Type 1 or a Type 2 seat belt assembly shall be installed for each designated seating position for which a Type 1 or a Type 2 seat belt assembly is required by Standard No. 208 (49 CFR 571.208). Seat belt anchorages for a Type 2 seat belt assembly shall be installed for each designated seating position for which a Type 2 seat belt assembly is required by Standard No. 208 (49 CFR 571.208).

S4.1.2

* * * * *

(b) The requirement in S4.1.1 of this standard that seat belt anchorages for a Type 1 or a Type 2 seat belt assembly shall be installed for certain designated seating positions does not apply to any such seating positions that are equipped with a seat belt assembly that meets the frontal crash protection requirements of S5.1 of Standard No. 208 (49 CFR 571.208).

* * * * *

Issued on January 13, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–1344 Filed 1–18–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

[Docket No. 950106004–5004–01; I.D. 121494C]

RIN 0648–AB79

Endangered Fish or Wildlife; Special Prohibitions; Approaching Humpback Whales in Hawaiian Waters

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a rule that prohibits aircraft from approaching closer than 1,000 ft (300 m) to a humpback whale, and prohibits vessels or people from approaching by any means closer than 100 yd (90 m) to a humpback whale in Hawaiian waters. These provisions were contained in an interim rule issued in 1987. The interim rule also identified cow/calf waters and contained provisions concerning approaches to humpback whales in these areas. Section 17 of the Marine Mammal Protection Act Amendments of 1994 terminated the latter provisions. This rule implements the statutory change.

EFFECTIVE DATE: January 19, 1995.

ADDRESSES: Hilda Diaz-Soltero, Regional Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Eugene T. Nitta, Protected Species Program Manager, 808–973–2937; Dean Wilkinson, Marine Mammal Division, Office of Protected Resources, 301–713–2322; James H. Lecky, Chief, Protected Species Management Division, 310–980–4015.

SUPPLEMENTARY INFORMATION:

Background

On November 23, 1987, NMFS published an interim rule (52 FR 44912–44915) regulating the approach to humpback whales in Hawaii (50 CFR 222.31). Paragraph (b) described certain waters as cow/calf waters and specified a minimum approach distance of 300 yd (270 m) to humpback whales in these areas. Section 17 of the Marine Mammal Protection Act Amendments of 1994 (Public Law 103–238) provides that it is legal to approach no closer than 100 yd (90 m) to a humpback regardless of whether the approach is made in waters designated as cow/calf waters. Section 17(b) of the statute provides:

Subsection (b) of section 222.31 of title 50, Code of Federal Regulations, shall cease to be in force and effect.

This rule implements the statutory provision. The change to the regulations is nondiscretionary and technical in nature.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866. Because this rule implements a statutory determination under which the Agency has no flexibility for implementation, the Assistant Administrator for Fisheries, NOAA, under section 553(b) (B) and (d) of the Administrative Procedure Act (5 U.S.C. 553 *et seq.*) for good cause finds that it is unnecessary to provide notice and public comment on this rule, or to delay for 30 days its effective date. As NMFS is unable to consider alternatives to the statutory mandate, the preparation of an environmental assessment under the National Environmental Policy Act is not required, and none was prepared. Because this rule is being issued as a final rule without prior public comment, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, and none has been prepared. This final rule is expected to result in no economic costs to the public.

List of Subjects in 50 CFR Part 222

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: January 12, 1995.

Charles Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 222 is amended as follows:

PART 222—ENDANGERED FISH OR WILDLIFE

1. The authority citation for part 222 continues to read as follows:

Authority: 16 U.S.C. 1531–1543.

2. Section 222.31 is revised to read as follows:

§ 222.31 Approaching humpback whales in Hawaii.

Except as provided in subpart C (Endangered Fish or Wildlife Permits) of this part it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or to cause

to be committed, within 200 nautical miles (370.4 km) of the Islands of Hawaii, any of the following acts with respect to humpback whales (*Megaptera novaeangliae*):

(a) Operate any aircraft within 1,000 ft (300 m) of any humpback whale; or

(b) Approach by any means, within 100 yd (90 m) of any humpback whale; or

(c) Cause a vessel or other object to approach within 100 yd (90 m) of a humpback whale; or

(d) Disrupt the normal behavior or prior activity of a whale by any other act or omission. A disruption of normal behavior may be manifested by, among other actions on the part of the whale, a rapid change in direction or speed; escape tactics such as prolonged diving, underwater course changes, underwater exhalation, or evasive swimming patterns; interruptions of breeding, nursing, or resting activities, attempts by a whale to shield a calf from a vessel or human observer by tail swishing or by other protective movement; or the abandonment of a previously frequented area.

[FR Doc. 95–1340 Filed 1–18–95; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 60, No. 12
Thursday, January 19, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWP–1]

Proposed amendment of Class D airspace; Redding, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class D airspace at Redding, CA. This action is necessary due to the recent closures of Enterprise Skypark, CA and Redding Sky Ranch Airport, CA. those portions within a 1-mile radius of Redding Sky Ranch Airport and Enterprise Skypark, which are presently addressed in the current Redding Class D airspace area description, will be deleted from the amended Class D airspace area at Redding, CA.

DATES: Comments must be received on or before March 10, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 95–AWP–1, Air Traffic Division, P.O. Box 92007, World Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch Air Traffic Division, at the address show above.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297–0010.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decision on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–AWP–1.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 1500 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldwide Postal Center, Los Angeles, California 90009.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class D airspace area at Redding, CA. This proposed action is necessary due to the recent closures of Enterprise Skypark and Redding Sky Ranch Airport. Those portions within a 1–mile radius of Redding Sky Ranch Airport and Enterprise Skypark, which are currently depicted in the Class D airspace description, will be deleted from the amended Class D airspace area at Redding, CA. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace areas designations are published in Paragraph 5000 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace designations listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Navigation (Air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E. O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.09B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AWP CA D Redding, CA [Revised]
Redding Municipal Airport, CA
(Lat. 40°30′32″ N, long. 122°17′30″ W)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.3-mile radius of the Redding Municipal Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on January 6, 1995.

Richard R. Lien,

Manager, Air Traffic Division Western-Pacific Region.

[FR Doc. 95–1268 Filed 1–18–95; 8:45 am]
BILLING CODE 4910–13–M

Office of the Secretary

14 CFR Part 258

[Dockets No. 47546, 49511, 49512, and 49513; Notice 95–3]

RIN 2105–AC17

Disclosure of Change-of-Gauge Services

AGENCY: Department of Transportation, Office of the Secretary (OST).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In order to ensure that prospective airline consumers are given pertinent information on the nature of change-of-gauge services, *i.e.*, services with one flight number that require a change of aircraft, the Department of Transportation is proposing to codify and augment its current disclosure requirements. The Department is requesting comments on the following three proposed requirements, which would apply to U.S. air carriers, foreign air carriers, and where appropriate, ticket agents (including travel agents) doing business in the United States: (1) that transporting carriers include notice of required aircraft changes in their written and electronic schedule information provided to the public, to the *Official Airline Guide* and comparable publications, and to computer reservations systems, (2) that consumers be given reasonable and timely notice before they book transportation that a particular service with a single slight number entails a change of aircraft *en route,* and (3) that written notice of the aircraft change be provided at the time of sale. This proposal constitutes the department's response to the petition of American Airlines in Docket 47546 to ban the practice of ''funnel flights,'' a type of change-of gauge service. The Department is also dismissing the complaints of TACA International Airlines, Aviateca, and Nicaraguense de Aviacion (''NICA'') in Dockets 49511, 49512, and 49513, respectively, against Continental Airlines for operating funnel flights.

DATES: The Department requests comments by March 20, 1995 and reply comments by April 19, 1995. The Department will consider late-filed comments only to the extent practicable.

ADDRESSES: Comments should be filed with the Docket Clerk, U.S. Department of Transportation, Room 4107, Docket No. 47546, 400 Seventh Street SW, Washington, DC 20590. To facilitate consideration of the comments, we ask commenters to file twelve copies of each submission. We also encourage commenters to submit electronic versions of their comments to the Department through the Internet; our e-mail address is dot__dockets@postmaster.dot.gov.[1] Please note, however, that at this time the Department considers only the paper copies filed with the Docket Clerk to be official comments. Comments will be available for inspection at the above address from 9:00 a.m. to 5:00 p.m., Monday through Friday. For acknowledgment of receipt of comments, include a stamped, self-addressed postcard, which the Docket Clerk will date-stamp and mail.

FOR FURTHER INFORMATION CONTACT: Betsy L. Wolf, Senior Trial Attorney, Office of Aviation Enforcement and Proceedings (202–366–9356), Office of the General Counsel, U.S. Department of Transportation, 400 7th St. SW., Washington, DC 20590.

[1] Our X.400 e-mail address is as follows: G=dot/S=dockets/OU1=qmail/O=hq/p=gov+dot/a=attmail/c=us.

SUPPLEMENTARY INFORMATION:

Introduction

A change-of-gauge service is a type of scheduled passenger air transportation for which the operating carrier uses one single flight number even though passengers do not travel in the same aircraft from origin to destination but must change planes at an intermediate stop. One-flight-to-one flight change-of-gauge service differs from ordinary connecting service in that the carrier will usually hold the second aircraft for the arrival of the first one. *Computer Reservations System (CRS) Regulations, Final Rule, 57 FR* 43780, 43804 (September 22, 1992).

''Change-of-gauge service is a long-established practice in transportation. The term itself originate with the railroads when passengers had to change trains due to differences in the size of tracks. Change-of-gauge services have been used in aviation for decades. In 1972, the Civil Aeronautics Board rejected the contention that change-of-gauge services were an unfair or deceptive practice or an unfair method of competition, as long as notice was given, and it changed its rules to accommodate them. Internationally, in 1978, the United States won an international arbitration brought when France attempted to limit the right of a U.S. carrier to operate change-of-gauge service. The tribunal found that the agreement between the United States and France permitted change-of-gauge service by giving each country wide discretion over operational aspects of flight. Change-of-gauge services are constantly used in cargo transportation, where they sometimes entail changes from one mode of transportation to another. The policy of the United States has been to permit intermodal changes of gauge as long as shippers are not mislead as to actual service.

In addition to one-flight-to-one flight change-of-gauge services, change-of-gauge services can also involve aircraft changes between multiple flight on one side of the change point and one single flight on the other side. Change-of-gauge services with multiple origins or destinations are called ''Y'' (*i.e.*, two-for-one), ''W'' (*i.e.*, three-for-one), or ''starburst'' (*i.e.*, unrestricted) changes of gauge, depending on the shape of the route patterns. Popularly, they are also called ''funnel flights.'' The United States has taken the lead in persuading our bilateral aviation partners to move beyond one-for-one change-of-gauge services to allow carriers the flexibility to operate multiple changes of gauge. As with one-for-one change-of-gauge services, the carrier assigns a single

flight number for the passenger's entire itinerary even though the passenger changes planes, but in addition, the single flight to or from the exchange point itself has multiple numbers: one for each segment with which it connects and one for the local market in which it operates. That flight is thus listed in CRSs under different numbers in different city-pair markets. As an example, an airline might operate three flights to London from three European cities: Flight 100 from Frankfurt, Flight 200 from Paris, and Flight 300 from Rome. In London, passengers from all three flights board a single aircraft bound for New York. The London-New York flight would carry all three flight numbers plus its own number. Schedules would show direct or through flights to New York from Frankfurt, Paris, and Rome as well as the nonstop flight from London.

49 U.S.C. § 41712, formerly section 411 of the Federal Aviation Act, authorizes the Department to identify and ban unfair or deceptive practices or unfair methods of competition on the part of air carriers, foreign air carriers, and ticket agents. Under § 41712, the Department has adopted various regulations and policies to prevent unfair or deceptive practices or unfair methods of competition, such as the CRS rules (14 CFR Part 255) and our policy on fare advertising (14 CFR § 399.84), for example., The Department's current CRS rules, adopted in September of 1992, require that CRS displays give notice of any flight that involves a change of aircraft *en route Id* at 43835; 14 CFR 255.4(b)(2). In addition the Department requires as a matter of policy that consumers be given notice of aircraft changes for change-of-gauge flights. *See* Order 89–1–31 at 5.

Petition for Rulemaking

On May 16, 1991, American Airlines, Inc., filed a petition for rulemaking to prohibit funnel flights, claiming that they deceive consumers and prejudice airline competition. American maintains that uninformed consumers are harmed when they decide to buy transportation on funnel flights, because they mistakenly believe that they will be traveling from origin to destination on one plane, thus avoiding the risk that they or their baggage will miss connections. American maintains that competing carriers suffer harm in two ways. First, they fail to sell their own connecting services of equivalent quality to the misinformed passengers. Second, in CRS displays for any city-pair, they have only one listing for their connecting services, whereas a funnel flight is listed twice, both as a direct flight with a single flight number and as a connecting service. According to American, this double listing not only gives undue exposure to the funnel flights but also pushes competitive connecting services to later CRS screens where they are less likely to be sold.

American acknowledges that CRSs in the United States attempt to call funnel flights to the attention of their travel agent subscribers by including the notation ''CHG'' with these flights' CRS listings. (The adoption of 14 CFR 255.4(b)(2) *supra*, occurred after American filed its petition.) Despite this precaution, however, American claims that many consumers still buy tickets on funnel flights without understanding that they will be making a connection and not remaining on one plane throughout their journey. American states that confusion may result for a number of reasons: the travel agent may fail to explain matters adequately to the traveler; the person making the reservation may not be the person taking the trip, and even if the former understands the situation, he or she may fail to explain matters adequately to the latter; or the traveler may become confused upon receiving just one flight coupon instead of the two that one would normally expect for a connection.

American contends that funnel flights offer no offsetting benefit to the traveling public to justify their existence. American also contends that no carrier will forgo the practice as long as any of its competitors maintains it. Therefore, except in the case of ''true'' change-of-gauge flights that are specifically authorized or required by bilateral agreements to have a single flight number, American urges that funnel flights be prohibited. It proposes that the Department adopt the following language as a new paragraph (c) to § 399.81 of our regulations, ''Unrealistic or deceptive scheduling'' (14 CFR 399.81):

> (c) Except as otherwise expressly approved by the Department, it is the policy of the Department to regard as an unfair or deceptive practice, and an unfair method of competition, the use by an air carrier, commuter air carrier, or foreign air carrier of multiple flight numbers for a single aircraft operating on any given day in a single city-pair for interstate, overseas, or foreign air transportation.

American proposes that this rule take effect 90 days after its adoption in order to allow for an orderly transition.

Comments and Reply Comments

Seven air carriers (Lufthansa German Airlines, British Airways PLC, Delta Air Line, Inc., Swissair [Swiss Air Transport Company, Ltd.], Air France, Virgin Atlantic Airways, Ltd., and Sabena Belgian World Airlines), one group of fourteen airlines (the Orient Airlines Association), two other groups (the American Society of Travel Agents, Inc. [ASTA] and the Dallas/Fort Worth Parties), one individual (Donald L. Pevsner, Esq.), and one travel agency (Magic Carpet Travel Agency) filed comments in response to American's petition. Three carriers (American Trans Air, Inc., Air Canada, and American) filed reply comments. All of these pleadings may be reviewed in the docket. In reaching our decision to propose the rule discussed below, the Department has considered the information provided and arguments advanced by the commenters.

To summarize the pleadings, all commenters except Air Canada support a prohibition of funnel flights, although some suggest variations on American's proposed language that would more clearly permit code-sharing and blocked space arrangements or that would ban all change-of-gauge flights that are not required by bilateral agreements. Some suggest addressing funnel flights through the CRS rules rather than by amending our policy statement on unrealistic or deceptive scheduling. Several foreign carriers take the position that foreign carriers are particularly harmed by funnel flights and that this practice violates the spirit if not the letter of certain bilateral agreements. Mr. Pevsner also asks the Department to go so far as to ban all ticketing of two or more flight segments on a single-coupon, whether in interstate or foreign air transportation.

Funnel Flight Complaints Against Continental

On April 18, 1994, three foreign air carriers filed nearly identical complaints in which they ask the Department to order Continental Airlines, Inc. to cease and desist from operating funnel flights between the United States and Latin America. TACA International Airlines, S.A., Aviateca, S.A., and Nicaraguense de Aviacion, S.A. (''NICA'') filed their complaints in Dockets 49511, 49512, and 49513, respectively. The three complainants argue that Continental's funnel flights deceive and confuse consumers and harm competition. Specifically, they maintain that the funnel flights keep consumers from buying the most convenient transportation and give them the mistaken impression that Continental offers far more flights to Latin America than it actually does. They also maintain that Continental's funnel flights harm competition not

only by misleading consumers but by unfairly outranking other equivalent services in CRS displays and displacing such services to later CRS screens where they are less likely to be sold. The complainants also maintain that Continental's funnel flights deprive them of a fair and equal opportunity to compete.

Apart from the issue of funnel flights, TACA charges Continental with attempting to dominate the Texas-Latin America market by unilaterally terminating a prorate agreement between the two carriers in the El Salvador-Houston market, by engaging in predatory pricing, by opposing TACA's expansion of service through Honduran flights, and by opposing TACA's expansion of service at Dallas/Fort Worth.

United and American both filed consolidated answers supporting the complaints but urging the Department to ban funnel flights as a practice industrywide rather than merely acting on individual complaints.

Continental filed individual answers opposing the complaints. Continental maintains that its funnel flights are entirely legal, as are the other activities of which TACA complains. The carrier also denies that its funnel flight service receives preference over other on-line connecting services in CRSs other than SystemOne. As an affirmative defense, Continental notes that the Department has not acted on American's petition for rulemaking to ban funnel flights. In addition, Continental asserts that TACA owns a 30 percent share of Aviateca and a 49 percent share of NICA, and it maintains that the complaints represent a concerted response to its own opposition to TACA's requests for extra-bilateral authority to serve Dallas/Fort Worth and all points in Honduras and to its own complaint about lack of access to jetways at San Salvador as well. Continental also characterizes the complaints as a concerted effort to limit Continental's ability to compete in the U.S.-Central America market.

Notice of Proposed Rulemaking

Proposed Rule: By this notice, we propose to require U.S. air carriers, foreign air carriers, and, where applicable, ticket agents (including travel agents) doing business in the United States to make the following disclosures of all change-of-gauge services, or services with a single flight number that require changes of aircraft *en route* (including funnel flights):

(1) notice by carriers of required aircraft changes in written and electric schedule information provided to the public, to the *Official Airline Guide* and comparable publications, and to computer reservations systems,

(2) in any direct oral communication with a consumer concerning a change-of-gauge service, notice before booking transportation that the service requires a change of aircraft *en route,* and

(3) written notice at the time of sale of such service stating the following:

Notice: Change of Aircraft Required

For at least one of your flights, you must change aircraft *en route* even though your ticket may show only one flight number and have only one flight coupon for that flight. Further, in the case of some travel, one of your flights may not be identified at the airport by the number on your ticket, or it may be identified by other flight numbers in addition to the one on your ticket. At your request, the seller of this ticket will give you details of your change of aircraft, such as where it will occur and what aircraft types are involved.

We are thus proposing to codify explicit requirements that all sellers of air transportation make effective disclosure to consumers that change-of-gauge itineraries, including funnel flights, require a change of aircraft. The contentions of American and the various commenters, as confirmed by our Consumer Affairs office, tentatively persuades us that even with our current policy requiring disclosure of aircraft changes, too many consumers may be buying transportation on these services without realizing that they will be changing planes. Also, despite our adoption in 1992 of a rule requiring that CRS displays must identify single-number flights requiring a change of aircraft, it appears that travelers are still not always informed of *en route* aircraft changes, resulting in confusion and hardship.

We tentatively find that the failure to disclose required aircraft changes in scheduled passenger air transportation constitutes an unfair or deceptive practice or an unfair method of competition within the meaning of 49 U.S.C. 41712 (formerly section 411 of the Federal Aviation Act). We intend for the disclosure requirements proposed here to complement our CRS rule. The proposed rule should alleviate problems of passenger deception or confusion and any resultant harm to competition, and it should enable all consumers to make well-informed decisions when purchasing travel.

We are not persuaded that we should ban either single or multiple change-of-gauge services. The Department has generally declined to foreclose carriers' marketing and service innovations unless these violate 49 U.S.C. 41712 or otherwise contravene the public interest. We do not agree with American and the commenters that funnel flights or other change-of-gauge services violate 49 U.S.C. 41712 or contravene the public interest in and of themselves. We tentatively find that any problems of passenger deception or confusion that can be attributed to the absence of effective disclosure to prospective passengers can and should be solved by our proposed rule.

In calling for a ban on funnel flights and other change-of-gauge services, American and the commenters ignore the public benefits that these services provide. One-for-one change-of-gauge services are superior to ordinary online connections, because with the former, the carrier will usually hold the second aircraft for the arrival of the first one. Both American Trans Air, which argues that change-of-gauge services can promote economic efficiency, and Delta oppose banning these services. Multiple change-of-gauge services can promote economic efficiency by raising load factors on the funnel segments. Higher load factors in turn can enable carriers to charge lower fares, serve more markets, and increase frequency. A higher level and scope of service translate into increased competition, which also benefits consumers. If, as American argues, multiple change-of-gauge services really provide no benefits for consumers, then with effective disclosure, consumers will stop using them, so carriers will stop offering them.

The carriers who favor a ban on single and multiple change-of-gauge services also ignore the costs of banning these services. First, a ban on multiple change-of-gauge services could lead to higher fares in a significant number of international city-pairs. The Department exercises some control over the upward movement of fares in international air transportation on single-flight-number services, since it can block—and has blocked—fare increases that exceed the levels allowable under the Standard Foreign Fare Level for itineraries with one flight number. Such regulatory control does not extend to fares for itineraries held out under two or more flight numbers.

Second, a ban on multiple change-of-gauge services would sacrifice valuable international route rights, to the detriment of both the carriers and the traveling public. The United States has negotiated with our bilateral trading partners—and paid by making various concessions—for the rights to have its carriers conduct change-of-gauge services in foreign air transportation. Many bilateral agreements not only allow U.S. carriers to operate change-of-gauge services to and from points beyond foreign gateways but actually

require the beyond flights to be continuations of flights that originate in the United States or earlier legs of flights that are destined for the United States. Our bilateral agreement with Great Britain expressly requires that U.S. carriers use the same flight numbers for all change-of-gauge sectors, for example. This and similar restrictions make through flight numbers a necessity if U.S. carriers are to redeem international route rights to many points beyond foreign gateways. Banning multiple change-of-gauge services would sacrifice these rights and deprive the traveling public of U.S. carrier service. Moreover, most of the bilateral agreements that allow multiple change-of-gauge services do so for both parties and specifically authorize multiple flight numbers for a single operation. To prohibit foreign flag carriers from operating multiple change-of-gauge services in the United States would breach these agreements. To sacrifice U.S. carriers' rights unilaterally would contravene the public interest as a matter of principle and in practice could put U.S. carriers at a competitive disadvantage.

The pleadings indicate that the problems associated with change-of-gauge services lie not with the services in and of themselves but with the failure to inform passengers effectively that these services entail a change of aircraft *en route*. This failure, as stated above, we tentatively find to be an unfair or deceptive practice or an unfair method of competition. The disclosure rules that we are proposing should alleviate not only most of the consumer problems detailed by the commenters but also whatever competitive problems may now result from consumers' mistaken belief that they are purchasing single-plane transportation. For the reasons discussed below, the other concerns voiced by the commenters—*i.e.*, CRS display issues, the single-coupon ticketing, the effects on foreign air carriers, and the incomplete flight displays at airports associated with funnel flights and change-of-gauge services—do not, in our view, warrant a ban on these practices.

Those who comment on this notice should be aware that the tentative conclusions and analysis set forth here do not reflect any of the comments filed in Docket 49702, *Disclosure of Code-Sharing Arrangements and Long-Term Wet Leases, Notice of Proposed Rulemaking, 59 FR 40836 et seq.* (August 10, 1994). Rather, to the extent that they may bear on this rulemaking, we will consider these comments, as well as our disposition of them in our final action in the code-sharing rulemaking, before we adopt any final rule on disclosure of change-of-gauge services.

In light of our tentative conclusion that funnel flights do not violate 49 U.S.C. 41712 in and of themselves and should not be banned, we dismiss the complaints of TACA, Aviateca, and NICA against Continental in Dockets 49511, 49512, and 49513, respectively. Continental appears, moreover, to be complying with our policy requiring that passengers be informed of aircraft changes. After reviewing the complaints, we asked our Officer of Consumer Affairs to investigate Continental's compliance by making anonymous test calls, and that office informs us that in all of its calls, the aircraft change was disclosed. We also dismiss TACA's complaint because the carrier has provided no evidence in support of its charge of predatory pricing and because the other acts with which its charges Continental do not violate 49 U.S.C. 41712, any other provision of title 49 of the U.S. Code, or the bilateral agreement between the United States and El Salvador.

Passenger Confusion and Deception: In requiring operators of change-of-gauge services to disclose aircraft changes in their schedules and in requiring all sellers of scheduled passenger air transportation to make oral disclosure of aircraft changes to prospective passengers before booking travel and to provide written notice at the time of sale, we mean to eliminate instances in which passengers choose these types of transportation under a mistaken impression that they will remain on the same plane throughout their journeys. We understand that in some cases, passengers have only learned that they must change aircraft after they have begun their travel. The written notice should also eliminate any misunderstanding as to the nature of the transportation that might otherwise result from the receipt of only one flight coupon for an itinerary that entails a change of planes. It should eliminate or reduce as well any confusion that passengers might otherwise experience if they see multiple flight numbers listed at the airport for the same flight, with or without their own flight number. We have recently addressed analogous concerns regarding the sharing of airline designator codes by proposing to require sellers of air transportation to give passengers oral and written notice of such arrangements. *See Disclosure of Code-Sharing Arrangements and Long-Term Wet Leases, Notice of Proposed Rulemaking, supra.*

The disclosure requirements proposed here should thus address the problems associated with passengers' misunderstanding of the nature of their transportation. Two other consumer-related concerns cited by some commenters do not, in our view, justify a ban on one-for-one or multiple change-of-gauge services. First, that passengers are issued just one flight coupon and therefore cannot switch automatically to another carrier in the event that the ongoing segment of their transportation is cancelled or seriously delayed does not justify banning one-for-one or multiple change-of-gauge services. This restriction is not unique to those services. Many widely-used discount fares are not automatically transferrable from one carrier to another, either, but instead must be specially endorsed by the issuing carrier in order to be accepted by another carrier. Second, we do not agree that we must sacrifice the public benefits of multiple change-of-gauge flights in order to eliminate whatever confusion may result from their incomplete listing in some airports' displays. This is an issue that affected airports should address. In any event, the written notice that our proposed rule would require would alert passengers to the possibility of incomplete airport displays.

Competition: To the extent that competition among airlines may be affected when passengers reject other connecting services in favor of one-for-one or multiple change-of-gauge services under the mistaken belief that they will thereby avoid changing planes, our proposed disclosure requirements should correct this distortion.

American and the commenters also cite padded displays in CRSs as a competitive concern that warrants banning these practices outright. We do not agree, because the legitimacy of change-of-gauge services in and of themselves is a separate issue from the way that such services are displayed in CRSs. In fact, the issue of multiple CRS listings has been raised in two recent petitions for rulemaking: American and Trans World Airlines have filed petitions in Dockets 49620 and 49622, respectively, for a CRS rule prohibiting multiple listing of code-sharing services. In that context, the Department will consider the issue of display practices as it involves both code-sharing services and change-of-gauge services.

American and the commenters also complain that funnel flights are improperly given preference in CRSs over on-line connecting services. As noted above, though, Continental claims that even though its funnel flights to Latin America are displayed in CRSs as

direct services with a change of equipment no CRS except System One gives them a preference over other international on-line connecting services. Moreover, out CRS rules allow vendors to include change-of-gauge services with connecting services on a nondiscriminatory basis.

Effects on Foreign Air Carriers: Several commenters argue that we should ban multiple change-of-gauge services because they disproportionately harm foreign air carriers and because, in violation of various bilateral agreements, they deprive foreign air carriers of a fair and equal opportunity to compete. As we found in the CRS rulemaking, however, ''the right to a fair and equal opportunity to compete does not guarantee foreign air carriers the exact same opportunities that U.S. carriers have. [citations omitted]. . . U.S. and foreign carriers must each contend with the practical advantages of route structure and market identity that competing carriers have within their own countries.'' *Computer Reservations System (CRS) Regulations, Final Rule, supra,* at 43892–43893 (''Prescribed Algorithm''). For example, any one foreign carrier can generally offer change-of-gauge and on-line connecting service to the United States from far more points behind its homeland gateways than any U.S. carrier can serve. *Cf. id.* at 43803 (''On-Line Preference''). Furthermore, in an era of increasing code-sharing arrangements between U.S. and foreign air carriers—arrangements which enable the participants to offer the equivalent of change-of-gauge and on-line service between U.S. and foreign points behind and beyond the participants' gateways—foreign carriers now have additional opportunities to compete at interior-U.S. points. *See Disclosure of Code-Sharing Arrangements and Long-term Wet Leases, Notice of Proposed Rulemaking, supra,* 59 *FR* at 40837.

Request for Comments

We invite comments not only on the merits of our proposed disclosure requirements but also on the feasibility and costs of implementing them. Comments should be supported by concrete data. Any economic analysis should contain enough detail to allow the Department to make an independent evaluation of the position advocated.

Regulatory Analyses and Notices

The Department has determined that this action is not a significant regulatory action under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. The Department has placed a regulatory evaluation that examines the estimated costs and effects of the proposal in the docket.

The Department certifies that this rule, if adopted, would not have a significant economic effect on a substantial number of small entities. Although many ticket agents and some air carriers are small entities, the Department believes that the costs of notification will be minimal. The Department seeks comment on whether there are effects on small entities that should be considered. If comments provide information that there are significant effects on small entities, the Department will prepare a regulatory flexibility analysis at the final rule stage.

The Department does not believe that the proposed rule has sufficient federalism implications to warrant the preparation of a federalism assessment.

Paperwork Reduction Act

The proposed rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 2507 *et seq.*).

List of Subjects in 14 CFR Part 258

Air carriers, Foreign air carriers, Ticket agents, and Consumer protection.

For the reasons set forth in the preamble, the Department proposes to amend Title 14, Chapter II, Subchapter A by adding a new Part 258, to read as follows:

PART 258—DISCLOSURE OF CHANGE-OF-GAUGE SERVICES

Sec.
258.1 Purpose.
258.2 Applicability.
257.3 Definitions.
258.4 Unfair and Deceptive Practice.
258.5 Notice Requirement.

Authority: 49 U.S.C. 40113(a) and 41712.

§ 258.1 Purpose.

The purpose of this part is to ensure that consumers are adequately informed before they book air transportation or embark on travel involving change-of-gauge services that these services require a change of aircraft *en route.*

§ 258.2 Applicability.

This rule applies to the following:

(a) direct air carriers and foreign air carriers that sell or issue tickets in the United States for scheduled passenger air transportation on change-of-gauge services or that operate such transportation; and

(b) ticket agents doing business in the United States that sell or issue tickets for scheduled passenger air transportation on change-of-gauge services.

§ 258.3 Definitions.

(a) *Air transportation* has the meaning ascribed to it in 49 U.S.C. § 40102(5).

(b) *Carrier* means any air carrier or foreign air carrier as defined in 49 U.S.C. 40102(2) or U.S.C. 40102(21), respectively, that engages directly in scheduled passenger air transportation.

(c) *Change-of-gauge service* means a service that requires a change of aircraft *en route* but has only a single flight number.

(d) *Ticket agent* has the meaning ascribed to it in 49 U.S.C. 40102(40).

§ 258.4 Unfair and deceptive practice.

The holding out or sale of scheduled passenger air transportation that involves change-of-gauge service is prohibited as an unfair or deceptive practice or an unfair method of competition within the meaning of 49 U.S.C. § 41712 unless, in conjunction with such holding out or sale, carriers and ticket agents follow the requirements of this part.

§ 258.5 Notice requirement.

(a) *Notice in Schedules.* Carriers operating-of-gauge services to, from, or within the United States shall ensure that in the written and electronic schedule information they provide to the public, to the *Official Airline Guide* and comparable publications, and to computer reservations systems, these services are shown as requiring a change of aircraft.

(b) *Oral Notice to Prospective Consumers.* In any direct oral communication with a consumer in the United States concerning a change-of-gauge service, any carrier or ticket agent doing business in the United States shall tell the consumer before booking scheduled passenger air transportation to, from, or within the United States that the service requires a change of aircraft *en route.*

(c) *Written Notice.* At the time of sale in the United States of a change-of-gauge service, the selling carrier or ticket agent shall provide written notice stating the following:

Notice: Change of Aircraft Required

For at least one of your flights, you must change aircraft *en route* even though your ticket may show only one flight number and have only one flight coupon for that flight. Further, in the case of some travel, one of your flights may not be identified at the airport by the number on your ticket, or it may be identified by other flight numbers in addition to the one on your ticket. At your request, the seller of this ticket will give you details of your change of aircraft, such as

where it will occur and what aircraft types are involved.

Issued under authority delegated in 49 CFR 1.56a(h)(2) in Washington, D.C. on January 12, 1995.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–1331 Filed 1–18–95; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM95–5–000]

Release of Firm Capacity on Interstate Natural Gas Pipelines

January 12, 1995.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to amend its capacity release regulations to permit firm shippers of natural gas to negotiate prearranged releases of capacity for a full calendar month without compliance with the Commission's advance posting and bidding requirements. The amendment would make it easier to negotiate short-term capacity release transactions and would ease the reporting burden on industry.

DATES: Comments are due February 21, 1995.

ADDRESSES: An original and 14 copies of comments must be filed and refer to Docket No. RM95–5–000. Comments should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–2294

Joseph Vasapoli, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–0620.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street NE., Washington DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200 or 300bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASCII and WordPerfect 5.1 format. After 60 days the document will be archived, but still accessible. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street NE., Washington DC 20426.

Notice of Proposed Rulemaking

January 12, 1995.

In Order No. 636,[1] the Federal Energy Regulatory Commission (Commission) established a mechanism under which firm holders of capacity could release unneeded capacity they held on interstate pipelines to other shippers needing that capacity. The Commission is proposing to amend one provision of its capacity release regulations, § 284.243(h), to extend to one month the time period for which shippers can release firm capacity without having to comply with the Commission's advance posting and bidding requirements. The current regulations restrict this ability to less than one calendar month.

I. Reporting Requirements

The proposed rule affects the information required to be maintained on pipeline electronic bulletin boards (EBBs). The public reporting burden for EBBs is contained in the information requirement FERC–549(B), ''Gas Pipeline Rates: Capacity Release Information.'' If adopted, the proposed rule would eliminate the need for the industry to continue the current practice of using two capacity release postings (a less-than-one month release coupled with a one-day release) to complete a full month release transaction. Under the proposed rule, full month releases could be accomplished with only one such posting. The Commission estimates that approximately 1,500 paired release transactions occur per year. At an average burden of one hour per posting, the annual reduction in burden as a result of this rule is approximately 1,500 hours.

A copy of this proposed rule is being provided to the Office of Management and Budget (OMB). Interested persons may send comments regarding the burden estimates or any other aspect of this collection of information, including suggestions for further reductions of this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, N.E., Washington, D.C. 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415, FAX (202) 208–2425]. Comments on the requirements of this proposed rule may also be sent to the Office of Information and Regulatory Affairs of OMB, Washington, D.C. 20503 [Attention: Desk Officer for Federal Energy Regulatory Commission (202) 395–6880, FAX (202) 395–5167].

II. Background

Under the regulations promulgated in Order No. 636, holders of firm capacity on pipelines could reassign that capacity in two ways. The releasing shipper could choose to have the pipeline post the notice of release on the pipeline's Electronic Bulletin Board (EBB) so other shippers could submit bids for that capacity, with the capacity awarded to the highest bidder. Or, the releasing shipper could enter into a pre-arranged deal with another shipper (replacement shipper) for the release of capacity. For a pre-arranged release at less than the maximum rate, the pipeline had to post the release on its EBB to permit other shippers to bid for that capacity. If a shipper bid more than the pre-arranged release rate, the designated replacement shipper was given the opportunity to match that bid to retain the capacity.

In Order No. 636–A, several petitioners requested an exemption from the bidding process for short-term pre-arranged release transactions, contending that the requirements for advance posting and bidding are too administratively difficult for such transactions and could inhibit the efficient allocation of capacity.[2] In response, the Commission promulgated § 224.243(h), permitting firm shippers to

[1] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13267 (Apr. 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939 (Apr. 8, 1992), *order on reh'g,* Order No. 636–A, 57 FR 36128 (Aug. 12, 1992), III FERC Stats. & Regs. Preambles ¶ 30,950 (Aug. 3, 1992), *order on reh'g,* Order No. 636–B, 57 FR 57911 (Dec. 8, 1992), 61 FERC ¶ 61,272 (1992), *appeal re-docketed sub nom.*, Atlanta Gas Light Company and Chattanooga Gas Company, *et al.* v. FERC, No. 94–1171 (D.C. Cir. May 27, 1994).

[2] Order No. 636–A, III FERC Stats. & Regs. Preambles at 30,553.

release capacity to a designated replacement shipper for a period of less than one calendar month without having to comply with the advance posting and bidding requirements. Releases under this provision would have to be posted no later than 48 hours after the release transaction begins. In addition, the Commission prohibited parties in transactions covered by this exception from rolling-over or granting extensions without complying with the requirements for prior notice and bidding.

The Commission adopted the less-than-one calendar month exception to balance two objectives of the capacity release mechanism.[3] The exception served to promote a robust secondary market by ensuring that parties could quickly and efficiently consummate short-term deals in emergency situations, such as a power plant outage resulting in excess capacity, without the administrative complications resulting from the advance posting and bidding requirements. On the other hand, the restriction to less-than-one calendar month was intended to ensure that normal monthly transactions would have to comply with the advance posting and bidding requirements to ensure open and non-discriminatory access to the capacity release market. The Commission expressed confidence that the pipelines could design capacity release procedures to efficiently handle full calendar month transactions.

The capacity release system has now been in effect for a full year and the Commission has begun the process of evaluating the system's operation. In the course of this review, the staff of the Commission has conducted informal discussions about the operation of the capacity release system and possible changes or modifications to improve the system with all major segments of the gas industry, including pipelines, local distribution companies, marketers, producers, end-users, and others interested in the capacity release market, such as companies developing third-party bulletin boards.

III. Discussion

The Commission is now proposing to amend § 284.243(h) to extend the short-term release exception from less than one calendar month to a full calendar month. The revision would permit firm shippers to negotiate pre-arranged releases for a full calendar month without having to comply with the advance posting and bidding requirements.

During the course of staff's review of the capacity release system, industry participants overwhelmingly recommended that the less-than-one calendar month exception be modified to a full calendar month. They argued that the industry generally conducts its gas purchases on a monthly basis, so that customers requiring capacity need to acquire a full month's capacity. They further pointed out that most monthly transactions occur during a very compressed time period known as bid week and that this time pressure requires that shippers be able to obtain released capacity quickly with the certainty that the deal will go through as negotiated.

As a result, the industry has developed a practice of designing so-called ''29/1 day'' deals to arrive at full month releases. Under this practice, shippers release capacity under the § 284.243(h) exception for 29 days (or less than one calendar month) and then post a release offer for bidding for the remaining day of the month. This practice ensures that the designated replacement shipper can obtain a full month's capacity, since rarely do other shippers want to purchase capacity for one day or the one-day prearranged deal is posted at the maximum rate. While this procedure does permit full month releases, the industry participants claimed that posting for one day is administratively cumbersome. They pointed out that the 29/1 day deals require two EBB postings, the consummation of a second contract with the pipelines, and the need for two bills. Pipelines similarly have sought waivers of the Commission's regulations to change the definition of short-term prearranged releases to one full calendar month to eliminate the administrative burdens associated with double release requests.[4]

Based on the seeming unanimity of support for extending the short term exception to one full calendar month, the Commission is proposing to make this change. This revision should promote a more effective capacity release market because it will better comport with the industry's purchasing practices and will provide the speed and certainty needed for one month transactions, without entailing the administrative burdens inherent in the 29/1 day deals.

The Commission's original reason for restricting the short-term exception to less-than-one calendar month deals was to limit the exception to emergency situations, so as to maximize the open bidding for capacity. The Commission believed at the time that the pipelines' posting and bidding procedures could be designed to permit normal one-month transactions. However, the widespread use of 29/1 day deals demonstrates that bidding for one month deals is not taking place, and any attempt to limit or restrict the 29/1 practice in order to further promote bidding would seem only to create further inefficiencies. On balance, therefore, the greater speed and efficiency made possible by the elimination of the less-than-one calendar month restriction appears to outweigh any potential loss from the elimination of the advance posting and bidding requirements. The Commission and the industry will still be able to monitor one month deals for adherence to the Commission's policies against undue discrimination because all deals will be posted on the pipelines' EBBs within 48 hours.

Given the apparent broad support for changing the short term exception, the Commission is proposing to make this one change at this time so it can be implemented as quickly as possible. This, however, is not the end of the Commission's inquiry. The Commission still is considering further adjustments to the capacity release mechanism.

IV. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[5] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[6] The action taken here falls within categorical exclusions provided in the Commission's regulations.[7] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA)[8] generally requires a description

[3] *See* Order No. 636–A, III FERC Stats. & Regs. Preambles at 30,554; Order No. 636–B, 61 FERC at 61,994–95.

[4] Natural Gas Pipeline Company of America, 67 FERC ¶ 61,385 at 62,316–17 (1994) (Commission denied the requests because it wanted to ensure that changes to the capacity release system were uniform for all pipelines).

[5] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[6] 18 CFR 380.4.

[7] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5).

[8] 5 U.S.C. 601–612.

and analysis of final rules that will have significant economic impact on a substantial number of small entities. Since the proposed regulations do not increase the burdens on any companies or entities, they will not have a significant impact on small entities. Pursuant to section 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant impact on a substantial number of small entities.

VI. Information Collection Requirement

OMB regulations require approval of certain information collection requirements imposed by agency rules.[9] The information requirements affected by this proposed rule are in FERC–549B, ''Gas Pipeline Rates: Capacity Release Information'' (1902–0169). The Commission is issuing the proposed rulemaking including the information requirements to carry out its regulatory responsibilities under the Natural Gas Act (NGA) and Natural Gas Policy Act (NGPA) to promote a more effective capacity release market as instituted by the Commission's Order No. 636. The Commission's Office of Pipeline Regulation uses the data to review/monitor capacity release transactions as well as firm and interruptible capacity made available by pipelines and to take appropriate action, where and when necessary. The collection of information is intended to be the minimum needed for posting on EBBs to provide information about the availability of service on interstate pipelines.

The Commission is submitting to the Office of Management and the Budget a notification of the proposed revision to the collection of information. Interested persons may obtain information on these reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415], FAX (202) 208–2425. Comments on the requirements of this rule can be sent to OMB's Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for Federal Energy Regulatory Commission (202) 395–6880, FAX (202) 395–5167].

VII. Comment Procedures

The Commission invites interested persons to submit written comments on the matters proposed in this notice, including any related matters or alternative proposals that commenters may wish to discuss. An original and 14 copies of comments to this notice must be filed with the Commission no later than February 21, 1995. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, and should refer to Docket No. RM95–5–000.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 941 North Capitol Street NE., Washington, DC 20426, during regular business hours.

List of Subjects in 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 284, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for Part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C 7101–7532; 43 U.S.C 1331–1356.

2. In § 284.243, the first sentence of paragraph (h)(1) is revised to read as follows:

§ 284.243 Release of firm capacity on interstate pipelines.

* * * * *

(h)(1) A release of capacity by a firm shipper to a replacement shipper for a period of one calendar month or less need not comply with the notification and bidding requirements of paragraphs (c) through (e) of this section. * * * * * * * * *

[FR Doc. 95–1295 Filed 1–18–95; 8:45 am]

BILLING CODE 6717–01–P

[9] 5 CFR 1320.13.

International Trade Commission

19 CFR Part 210

Advance Notice of Proposed Rulemaking Concerning Commission Voting Procedures in Investigations and Related Proceedings on Unfair Practices in Import Trade.

AGENCY: International Trade Commission.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: The Commission is considering revision of its recently effective final rules for investigations and related proceedings under section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) to do the following: increase the number of votes required for the Commission to either review an initial determination (ID) on a matter other than temporary relief or grant a request for oral argument in connection with such a review; and prescribe the effect of a tie vote concerning post-review disposition of an ID on a matter other than temporary relief.

The Commission hereby solicits written comments from interested persons to aid the Commission in determining whether it should revise the final rules in the manner specified below.

DATES: Comments will be considered if received on or before March 20, 1995.

ADDRESSES: A signed original and 18 copies of each set of comments, along with a cover letter stating the nature of the commenter's interest in the proposed rulemaking, should be submitted to Donna R. Koehnke, Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: P. N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3061. Hearing-impaired individuals can obtain information concerning the proposed rulemaking by contacting the Commission's TDD terminal at 202–205–1810.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 1994, the Commission published final rules for 19 CFR part 210 to replace the interim rules currently found in 19 CFR parts 210 and 211.[1] Final rule 210.43(d)(3) indicates that the Commission will review an initial determination (ID) concerning a matter other than temporary relief when at least one of the participating Commissioners votes in favor of a review. Final rule 210.45(a) similarly provides that the Commission must grant a request for oral argument in connection with such a review when at least one of the participating Commissioners votes in favor of such argument.[2]

[1] *See* 59 FR 39020 (Part II) (Aug. 1, 1994).

[2] IDs concerning temporary relief are processed differently from other types of IDs and thus are not

Continued

Final rule 210.45(c), which relates to review of IDs on matters other than temporary relief, describes the specific kinds of action that may be taken as a result of a review (viz., that the ID may be affirmed, reversed, remanded for further proceedings, modified, or set aside, in whole or in part). Final rule 210.45(c) says nothing, however, about what happens in the event that there is a tie vote on the disposition of the ID. The relevant statutes—i.e., section 330 of the Tariff Act of 1930 (19 U.S.C. § 1330), section 337, and the Administrative Procedure Act (APA) (5 U.S.C. § 551 et seq.)—are similarly silent on that specific issue.

On August 19, 1994, the Commission's Inspector General (IG) issued Audit Report No. IG–03–94, *Review of Ways to Increase the Economy and Efficiency of the Process for Conducting Section 337 Investigations,* which recommended that the Commission amend its section 337 rules to provide that in order for a review to be conducted or a request for oral argument to be granted, one-half of the participating Commissioners must vote in favor of the review or oral argument. The IG further recommended that the Commission amend the rules to ''clarify a tie vote situation,'' e.g., to provide that a tie vote on the disposition of an ID will have the effect of affirming the ID. The IG cited several reasons for recommending that the Commission abolish the one-vote-triggers-review-or-oral argument rules. She noted first that section 330 of the Tariff Act provides that an investigation may be instituted and a hearing may be conducted only if one-half of the participating Commissioners vote in favor of the investigation or hearing.[3] The IG went on to say that, in her opinion, Commission decisions on whether to review an ID and whether to grant a request for oral argument are comparable to the statutory decisions on whether to institute an investigation and whether to conduct a hearing and, thus, should be subject to the same requirements as those imposed statutorily on institution and hearing decisions. The IG added that requiring one-half of the participating Commissioners to vote in favor of review or oral argument in order for such review or argument to be conducted would aid in accomplishing the Commission's goal of streamlining its operations and reducing the burden on its ''customers.''[4]

In support of her recommendation that the Commission ''clarify a tie vote situation,'' the IG noted that the Commission had successfully avoided tie votes in the past, but that it would not feel the need to do so in the future if there were a Commission rule stating the effect of such votes. She also expressed the opinion that the existence of such a rule would be beneficial to the parties to section 337 investigations.[5]

The Commission notes that there is a question as to whether the Commission has the authority to promulgate a regulation stating that a tie vote would have the effect of affirming an ID under the current law. Section 337(c) requires that the Commission's section 337 determinations ''shall be made on the record after notice and opportunity for a hearing in conformity with the provisions of [the APA].''[6] The APA provision concerning hearings requires that, when the agency itself does not preside at the reception of evidence, a qualified ''presiding employee,'' such as an administrative law judge (ALJ), preside at the reception of evidence and render an ID. The APA further provides that:

> When the presiding employee makes an initial decision, that decision then becomes the decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within time provided by rule. On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.[7]

The limited applicable case law suggests that this provision may be given either of two conflicting interpretations.

The first interpretation would be that an ID becomes the agency decision unless the agency decides to review it. If, however, the agency decides to review an ID, the agency must take some affirmative action to issue its decision. The common law rule for multiple-member administrative agencies, articulated in the frequently-cited 1930 *Bakelite* decision arising from a Commission section 337 determination, is that a majority of a quorum is necessary to act for the agency.[8] Under this view, once the Commission determines to review an ID, a tie vote would not constitute Commission action. Instead, a majority of a Commission quorum would be required to take some affirmative action with respect to the reviewed ID.[9]

The second possible interpretation of the APA provision is that an ID becomes the agency decision unless the agency takes affirmative action to render another decision in its place.

Interested persons should also note that a tie-breaker rule would not necessarily succeed in resolving all questions arising from Commission tie votes in section 337 investigations. A tie vote resulting in adoption of an affirmative ID would not be sufficient for issuance of an agency remedial order; majority action would be required.[10] Consequently, a tie-breaker rule concerning IDs on violation of section 337 which provided that a tie-vote should constitute an affirmative determination would not solve a potential deadlock among the Commissioners as to whether a remedy should be issued on a tie-vote affirmative.

In order to aid the Commission in determining whether to proceed with the proposed rulemaking, the Commission would like to have all commenters address the following issues:

1. Whether the Commission should revise final rule 210.43(d)(3) to provide that the Commission will review an ID on a matter other than temporary relief when at least one-half of the participating Commissioners vote in favor of a review.

2. Whether the Commission should revise final rule 210.45(a) to provide that the Commission will grant a request for oral argument in connection with review of an ID on a matter other than temporary relief when at least one-half of the participating Commissioners vote in favor of such argument.

3. Whether the Commission should revise final rule 210.45(c) to state what effect a tie-vote will have on the Commission's disposition of an ID on a matter other than temporary relief—e.g., that a tie-vote on the disposition of an ID after a review will constitute an affirmance of the ID. The Commission is especially interested in receiving comments on the question of whether this change could be effected without statutory changes.

If the Commission decides to proceed with this rulemaking after reviewing the

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subject to the one-vote-triggers-review-or-oral-argument rules. *See* final rule 210.66.

[3] *See* 19 U.S.C. § 1330(d)(5).

[4] *See* Report No. IG–03–94 at pages 12–13.

[5] *Id.* at pages 13–14.

[6] 19 U.S.C. § 1337(c).

[7] 5 U.S.C. § 557(b).

[8] *Frischer & Co.* v. *Bakelite Corp.*, 39 F.2d 247, 254–55 (C.C.P.A.), *cert. denied,* 282 U.S. 852 (1930). *Bakelite* rejected the argument that the Commission could not render a section 337 determination on a 3–2 vote because three Commissioners did not constitute a majority of the full six-member Commission. The ''majority of a quorum'' rule of *Bakelite* was subsequently adopted by the Supreme Court in *Federal Trade Commission* v. *Flotill Products, Inc.,* 389 U.S. 179 (1967).

[9] Under 19 U.S.C. § 1330(c)(6), ''[a] majority of the commissioners in office shall constitute a quorum. * * *''

[10] *See Frischer & Co. v. Bakelite Corp.,* 39 F.2d at 254–55.

comments filed in response to this notice, the rule changes will be promulgated in accordance with the APA (see 5 U.S.C. § 553), and will be codified in 19 CFR part 210.

Dated: January 11, 1995.

By Order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–1332 Filed 1–18–95; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 422

RIN 0960–AD74

Statement of Earnings and Benefit Estimates

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: We are proposing to revise our rules on sending statements of earnings and benefit information to individuals. Under our current rules, which implement section 1143(a) of the Social Security Act (the Act), we are required to send a statement to an eligible individual who requests it. Under these proposed rules, we will provide the statement without a request to an eligible individual, as required by section 1143(c) of the Act.

DATES: Your comments will be considered if we receive them no later than March 20, 1995.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966–0869, or delivered to the Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9 a.m. on the date of publication in the Federal Register. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in Wordperfect and will remain on the FBB during the comment period.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–8471.

SUPPLEMENTARY INFORMATION: Section 1143 of the Act requires the Secretary of Health and Human Services (the Secretary) to provide to eligible individuals ''a social security account statement'' (statement). We must fulfill this requirement in three phases. In the first phase, we were required, by October 1, 1990, to provide, upon the request of an ''eligible individual,'' a statement that contains certain information described below. Section 1143 defines an ''eligible individual'' as one who has a social security account number, has attained age 25 or over, and has wages or net earnings from self-employment.

The statement we provide under section 1143 of the Act must contain the following information as of the date of the request:

1. The amount of wages paid to and self-employment income derived by the individual;

2. An estimate of the aggregate of the employee and self-employment contributions of the individual for old-age, survivors', and disability insurance benefits;

3. A separate estimate of the aggregate of the employee and self-employment contributions of the individual for medicare hospital insurance coverage; and

4. An estimate of the potential monthly retirement (old-age), disability, dependents', and survivors' insurance benefits payable on the individual's earnings record and a description of medicare hospital insurance coverage.

We are carrying out this first phase, which is required by section 1143(a) of the Act and which we explained in the final rules published November 23, 1992, in the Federal Register (57 FR 54917). In these proposed rules, we explain how we will fulfill our obligations in the second and third phases of section 1143.

The second phase of providing statements, as stated in section 1143(c)(1) of the Act, requires that by not later than September 30, 1995, we must furnish this statement to each ''eligible individual'' who has attained age 60 by October 1, 1994 (i.e., by the beginning of fiscal year 1995), is not receiving benefits under title II of the Act, and for whom we can determine a current mailing address by methods we consider appropriate. We must also send this statement to each ''eligible individual'' who attains age 60 in fiscal years 1995 through 1999, i.e., October 1, 1994 through September 30, 1999, if the individual is not receiving benefits under title II of the Act, and if we can determine a current mailing address by methods we consider appropriate. In the case of an individual who attains age 60 in fiscal years 1995 through 1999, we will mail a statement to the individual in the fiscal year in which he or she attains age 60. We will mail the statement without requiring a request from the individual. We will also advise individuals receiving these statements that the information in our records will be updated annually and is available upon request.

The third phase of providing statements, as stated in section 1143(c)(2) of the Act, requires that beginning not later than October 1, 1999, we must provide this statement on an annual basis to each ''eligible individual'' who is not receiving benefits under title II and for whom we can determine a current mailing address by methods we consider appropriate. We must provide a statement without a request from the individual and, unlike the second phase, regardless of whether the eligible individual has attained age 60.

To implement the second phase of section 1143, we will use our records of assigned social security account numbers to identify eligible individuals who will attain age 60 by the appropriate times and who are not receiving benefits under title II of the Act. We have decided that the appropriate method now for determining an individual's current mailing address is to obtain it from the individual taxpayer files of the Internal Revenue Service (IRS). The IRS is authorized by section 6103(m)(7) of the Internal Revenue Code (26 U.S.C. 6103(m)(7)), as added by section 5111 of Public Law 101–508 (the Omnibus Budget Reconciliation Act of 1990), to disclose this information to us for our use in mailing the statements required by section 1143 of the Act. This source of address information is readily available to us, i.e., electronically accessible, using social security numbers as identifiers, and was clearly contemplated by Congress in the enactment of section 6103(m)(7) of the Internal Revenue Code.

Because individuals who live in Puerto Rico, the Virgin Islands, and Guam generally are not required to pay Federal income taxes, the IRS does not have their addresses. We have arranged to use the addresses from their local

taxpayer records, which the tax agencies in these three entities will provide to us.

In these proposed regulations, we state the circumstances under which we will not send an unrequested statement. Those circumstances, stated in proposed § 404.812(b), are based on our judgment that sending, or attempting to send, a statement to specified categories of individuals would not reasonably be required under section 1143 of the Act.

We will mail the statements throughout the fiscal year, rather than in one mass mailing. This is an administratively effective and cost-efficient method of handling the more than 6 million statements we will mail in fiscal year 1995 and the nearly 2 million we expect to mail in each fiscal year 1996 through 1999. The statements we send to eligible individuals who attain age 60 during fiscal years 1995 through 1999 or attain age 60 by the start of fiscal year 1995 will be mailed throughout the fiscal year so that individuals will receive statements in the fiscal year in which they qualify to receive one, as required by section 1143.

To implement the third phase of section 1143, i.e., sending an annual statement to eligible individuals who are not receiving benefits under title II of the Act, we will follow essentially the same procedures as those for the second phase of sending statements to eligible individuals age 60 or older, except that we will send statements to all eligible individuals, i.e., those age 25 and older.

In the final rules we published on November 23, 1992 (57 FR 54917), we revised § 404.810 to describe an individual's right to obtain a statement of earnings and benefit estimate, how to request it, and the information we need to comply with the request. In a new § 404.811, we listed the information that we will furnish in the statement of earnings and benefit estimate. Further, we revised § 422.125 so that most of the rules on statements of earnings and benefit estimates are now located in Subpart I of Part 404.

In these proposed regulations, we are revising § 404.811 for consistency with the new § 404.812, which explains the statement we will send without a request, as required by section 1143(c) of the Act. We will also indicate whether the individual has the required credits (quarters of coverage) to be eligible for each type of benefit, and the ages at which various retirement amounts are potentially payable.

When individuals request statements, they are asked for information about when they expect to retire, i.e., stop working, how much they earned last year, and how much they expect to earn this year and in future years up to retirement. In § 404.811, we explain that if the individual does not already have the required credits (quarters of coverage) to be eligible to receive benefits, we may include up to eight additional estimated credits (four per year maximum) based on the requester's information about earnings for last year and this year that are not yet on our records. In addition, we state that the benefit estimate will be based partly on the information the requester provided about his or her planned retirement age and current and future earnings.

For the unrequested statements, we will not have information from the individual. Instead, we will estimate the individual's recent and future earnings based on his or her current social security record. In § 404.812, we explain that if there are earnings recorded in either of the two years before the year in which the individual is selected to get a statement, we will use the same earnings amount as that recorded in the later of these two years to project earnings for the current year and future years when we estimate the benefits. In addition, if the individual does not already have the required credits (quarters of coverage) to be eligible to receive benefits, we will use that last recorded earnings amount to estimate up to eight additional credits (four per year) for the last year and the current year. If there are no earnings recorded in either of the 2 years preceding the year of selection, we will not estimate any current and future earnings or additional credits (quarters of coverage) for the individual.

In summary, both §§ 404.811 and 404.812 list the information that we will include in the revised statement format. In addition, § 404.812 explains who will be sent an unrequested statement, who will not be sent an unrequested statement, and the selection and mailing process we will use. We are also proposing to amend § 422.125 to conform it to the changes we have described for subpart I of part 404.

Regulatory Procedures

Executive Order 12866

The Office of Management and Budget has reviewed these rules and determined that they do not meet the criteria for a significant regulatory action under E.O. 12866.

Regulatory Flexibility Act

We certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities since these regulations affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These proposed regulations impose no additional reporting and recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program Nos. 93.802 Social Security-Disability Insurance; 93.803 Social Security-Retirement Insurance; 93.805 Social Security-Survivors Insurance; 93.773 Medicare-Hospital Insurance)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind; Disability benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 422

Administrative practice and procedure; Freedom of information; Organization and functions (Government agencies); Social Security.

Dated: June 28, 1994.

Shirley Chater,

Commissioner of Social Security.

Approved: August 31, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, we propose to amend Subpart I of Part 404 of 20 CFR Chapter III and Subpart B of Part 422 of 20 CFR Chapter III as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for Subpart I of Part 404 continues to read as follows:

Authority: Secs. 205(a), (c)(1), (c)(2)(A), (c)(4), (c)(5), (c)(6), and (p), 1102 and 1143 of the Social Security Act; 42 U.S.C. 405(a), (c)(1), (c)(2)(A), (c)(4), (c)(5), (c)(6), and (p), 1302, and 1320b–13.

2. Section 404.811 is revised to read as follows:

§ 404.811 The statement of earnings and benefit estimates you requested.

(a) *General.* After receiving a request for a statement of earnings and the information we need to comply with the request, we will provide you or your authorized representative a statement of the earnings we have credited to your record at the time of your request. With the statement of earnings, we will include estimates of the benefits

potentially payable on your record, unless you do not have the required credits (quarters of coverage) for any kind of benefit(s). (However, see paragraph (b)(3) of this section regarding the possibility of our estimating up to eight additional credits on your record.) If we do not provide a statement of earnings and an estimate of all the benefits potentially payable, or any other information you requested, we will explain why.

(b) *Contents of statement of earnings and benefit estimate.* The statement of your earnings and benefit estimates will contain the following information:

(1) Your social security taxed earnings as shown by our records as of the date of your request;

(2) An estimate of the social security and medicare hospital insurance taxes paid on your earnings (although we do not maintain tax information);

(3) The number of credits, i.e., quarters of coverage, not exceeding 40, you have for both social security and medicare hospital insurance purposes, and the number you need to be eligible for social security and also for medicare hospital insurance coverage. If you do not already have the required credits (quarters of coverage) to be eligible to receive social security benefits and medicare hospital insurance coverage, we may include up to eight additional estimated credits (four per year) based on the earnings you told us you had for last year and this year that we have not yet entered on your record;

(4) A statement as to whether you meet the credits (quarters of coverage) requirements, as described in subpart B of this part, for each type of social security benefit when we prepare the benefit estimates, and also whether you are eligible for medicare hospital insurance coverage;

(5) Estimates of the monthly retirement (old-age), disability, dependents' and survivors' insurance benefits potentially payable on your record if you meet the credits (quarters of coverage) requirements. The benefit estimates we send you will be based partly on your stated earnings for last year (if not yet on your record), your estimate of your earnings for the current year and for future years before you plan to retire, and on the age at which you plan to retire. The estimate will include the retirement (old-age) insurance benefits you could receive at age 62 (or your current age if you are already over age 62), at full retirement age (currently age 65 to 67, depending on your year of birth) or at your current age if you are already over full retirement age, and at age 70;

(6) A description of the coverage under the medicare program;

(7) A reminder of your right to request a correction of your earnings record; and

(8) A remark that an annually updated statement is available on request.

3. Section 404.812 is added to read as follows:

§ 404.812 Statement of earnings and benefit estimates sent without request.

(a) *Who will be sent a statement.* Unless one of the conditions in paragraph (b) of this section applies to you, we will send you, without request, a statement of earnings and benefit estimates if:

(1) You have a social security account number;

(2) You have wages or net earnings from self-employment on your social security record;

(3) You have attained age 60 or older by October 1, 1994; you attain age 60 after October 1, 1994, but before October 1, 1999; or, beginning October 1, 1999, you have attained age 25 or older;

(4) We can determine your current mailing address.

(b) *Who will not be sent a statement.* We will not send you an unrequested statement if any of the following conditions apply:

(1) You do not meet one or more of the conditions of paragraph (a) of this section;

(2) Our records contain a notation of your death;

(3) You are entitled to benefits under title II of the Act;

(4) We have already sent you a statement, based on your request, in the fiscal year we selected you to receive an unrequested statement;

(5) We cannot obtain your address (see paragraph (c)(2) of this section); or

(6) We are correcting your social security earnings record when we select you to receive a statement of earnings and benefit estimates.

(c) *The selection and mailing process.* Subject to the provisions of paragraphs (a) and (b) of this section, we will use the following process for sending statements without requests:

(1) *Selection.* We will use our records of assigned social security account numbers to identify individuals to whom we will send statements.

(2) *Addresses.* If you are living in one of the 50 States, our current procedure is to get your address from individual taxpayer files of the Internal Revenue Service, as authorized by section 6103(m)(7) of the Internal Revenue Code (26 U.S.C. 6103(m)(7)). If you live in Puerto Rico, the Virgin Islands, or Guam, we will get your address from the taxpayer records of the Territory in which you live.

(3) *Age.* If you have attained age 60 by October 1, 1994, we will send you a statement on or before September 30, 1995. If you attain age 60 after October 1, 1994 but before October 1, 1999, we will send you a statement in the fiscal year, i.e., October 1 through September 30, in which you attain age 60. In either case, we will inform you that an annually updated statement is available on request. Beginning October 1, 1999, we will send you a statement each year in which you are age 25 or older.

(4) *Ineligible.* If we do not send you a statement because one or more conditions in paragraph (b) of this section apply when you are selected, we will send a statement in the first appropriate fiscal year thereafter in which you do qualify.

(5) *Undeliverable.* If the statement we send you is returned by the Post Office as undeliverable, we will not remail it.

(d) *Contents of statement of earnings and benefit estimates.* To prepare your statement and estimate your benefits, we will use the earnings on our records. If there are earnings recorded for you in either of the 2 years before the year in which you are selected to get a statement, we will use the later of these earnings as your earnings for the current year and future years when we estimate your benefits. In addition, if you do not already have the required credits (quarters of coverage) to be eligible to receive benefits, we will use that last recorded earnings amount to estimate up to eight additional credits (four per year) for last year and the current year if they are not yet entered on your record. If there are no earnings entered on your record in either of the two years preceding the year of selection, we will not estimate current and future earnings or additional credits for you. Your earnings and benefit estimate statement will contain the following information:

(1) Your social security taxed earnings as shown by our records as of the date we select you to receive a statement;

(2) An estimate of the social security and medicare hospital insurance taxes paid on your earnings (although we do not maintain tax information);

(3) The number of credits, i.e., quarters of coverage, not exceeding 40 (as described in paragraph (d) of this section), that you have for both social security and medicare hospital insurance purposes, and the number you need to be eligible for social security benefits and also for medicare hospital insurance coverage;

(4) A statement as to whether you meet the credit (quarters of coverage) requirements, as described in subpart B of this part, for each type of social security benefit when we prepare the

benefit estimates, and also whether you are eligible for medicare hospital insurance coverage;

(5) Estimates of the monthly retirement (old-age), disability, dependents' and survivors' insurance benefits potentially payable on your record if you meet the credits (quarters of coverage) requirements. If you are age 50 or older, the estimates will include the retirement (old-age) insurance benefits you could receive at age 62 (or your current age if you are already over age 62), at full retirement age (currently age 65 to 67, depending on your year of birth) or at your current age if you are already over full retirement age, and at age 70. If you are under age 50, instead of estimates, we may provide a general description of the benefits (including auxiliary benefits) that are available upon retirement.

(6) A description of the coverage provided under the medicare program;

(7) A reminder of your right to request a correction of your earnings record; and

(8) A remark that an annually updated statement is available on request.

PART 422—ORGANIZATION AND PROCEDURES

1. The authority citation for Subpart B of Part 422 continues to read as follows:

Authority: Secs. 205, 1102, and 1143 of the Social Security Act; 42 U.S.C. 405, 1302, and 1320b–13.

2. Section 422.125 is amended by revising paragraphs (a) and (b) to read as follows:

§ 422.125 Statement of earnings; resolving earnings discrepancies.

(a) *Obtaining a statement of earnings and estimated benefits.* An individual may obtain a statement of the earnings on his earnings record and an estimate of social security benefits potentially payable on his record either by writing, calling, or visiting any social security office, or by waiting until we send him one under the procedure described in § 404.812. An individual may request this statement by completing the proper form or by otherwise providing the information the Social Security Administration requires, as explained in § 404.810(b).

(b) *Statement of earnings and estimated benefits.* Upon receipt of such a request or as required by section 1143(c) of the Social Security Act, the Social Security Administration will provide the individual, without charge, a statement of earnings and benefit estimate or an earnings statement. See §§ 404.810ff concerning the information contained in these statements.

* * * * *

[FR Doc. 95–1309 Filed 1–18–95; 8:45 am]
BILLING CODE 4190–29–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

North Dakota Regulatory Program

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions and additional explanatory information pertaining to a previously proposed amendment to the North Dakota regulatory program (hereinafter, the ''North Dakota program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions and additional explanatory information pertain to North Dakota's ''Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments.'' The amendment is intended to revise this document to be consistent with the Federal regulations and to improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., m.s.t., February 3, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the North Dakota program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Room 2128, Casper, WY 82601–1918, Telephone: (307) 261–5776.

Edward J. Englerth, Director, Reclamation Division, North Dakota Public Service Commission, Capitol Building, Bismarck, ND 58505–0165, Telephone: (701) 224–4092.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the North Dakota program can be found in the December 15, 1980, Federal Register (45 FR 82214). Subsequent actions concerning North Dakota's program and program amendments can be found at 30 CFR 934.12, 934.13, 934.15, 934.16, and 934.30.

II. Proposed Amendment

By letter dated February 17, 1994, North Dakota submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. ND–U–01). North Dakota submitted the proposed revisions to its ''Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments'' (hereinafter, the ''revegetation success document'') in response to required program amendments at 30 CFR 934.16 (b) through (i), (w), and (x), and at its own initiative.

OSM announced receipt of the proposed amendment in the March 14, 1994, Federal Register (49 FR 11744), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. ND–U–05). Because no one requested a public hearing or meeting, none was held. The public comment period ended on April 13, 1994.

During its review of the amendment, OSM identified concerns relating to (1) Revegetation success standards for recreation, residential, or industrial and commercial postmining land uses; (2) revegetation success standards for prime farmlands; (3) use of sampling procedures not included in an approved State program; (4) revegetation success standards for tame pastureland; (5) consultation with the appropriate State agencies for stocking and planting arrangements for woodland and shelterbelt postmining land uses; (6) revegetation success standards for non-replacement shelterbelt postmining land use; (7) designation of fish and wildlife habitat and the premining assessment for fish and wildlife habitat; (8) revegetation success standards for wetlands and annual grain crops used for fish and wildlife habitat; (9) the establishment of a maximum sample

size when determining sample adequacy; (10) sampling techniques for measuring woody plant density; (11) the use of representative strips to measure soil productivity on prime farmlands; (12) inter-seeding as a normal husbandry practice; (13) random sampling of clipped forage samples; and (14) t-test statistical calculations.

OSM notified North Dakota of the concerns by letter dated September 9, 1994 (administrative record No. ND–U–10). North Dakota responded in a letter dated December 21, 1994, by submitting a revised amendment and additional explanatory information (administrative record No. ND–U–14) that addressed the concerns identified by OSM.

Specifically, North Dakota (1) Proposes a requirement for vegetative ground cover sufficient to control erosion for recreation, residential, or industrial and commercial postmining land uses; (2) provides Natural Resources Conservation Service (formerly the Soil Conservation Service) concurrence with the sampling techniques used to demonstrate revegetation success on reclaimed prime farmlands; (3) proposes to indicate that the use of any alternative sampling techniques must be approved by OSM as well as by North Dakota; (4) provides additional explanatory information concerning the demonstration of productivity on tame pastureland; (5) provides additional explanatory information concerning consultation and approval from the State Game and Fish Department and State Forester for woodland and shelterbelt stocking and planting arrangements; (6) proposes to delete the revegetation success standards for non-replacement shelterbelts; (7) proposes to clarify the requirements for a premining land use assessment when an area is primarily used by wildlife; (8) proposes to require (a) that the fourth-stage bond release standard for annual grain crops must be met for the last two consecutive years of the liability period and (b) the approved standard for wetlands must be met at the time of final bond release; (9) provides additional explanatory information concerning the establishment of a maximum sample size; (10) proposes to require that woody plant density must be determined using methods that are statistically valid with a 90 percent confidence level; (11) provides additional explanatory information concerning the use of representative strips to measure soil productivity on prime farmlands; (12) provides additional explanatory information concerning the use of inter-seeding as a normal husbandry practice; (13) proposes to disallow the use of random samples to determine moisture content of all samples; (14) proposes an additional statistical formula for use in t-tests; and (15) proposes correction of typographical errors.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed North Dakota program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the North Dakota program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

I. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

V. List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 10, 1995.

Charles E. Sandberg,

Acting Assistant Director, Western Support Center.

[FR Doc. 95–1221 Filed 1–18–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–94–150]

RIN 2115–AE47

Drawbridge Operation Regulations; Saugus River, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing a change to the regulations governing the Fox Hill SR107 Bridge at mile 2.5 over the Saugus River, between Saugus and Lynn, Massachusetts. This proposed change will permit the bridge owner, the Massachusetts Highway Department (MHD), to reduce the number of hours in a day that the bridge will be manned by drawtenders and opened on signal. The proposed change also provides that at all other times drawtenders would be on call for one hour advance notice openings. This action is being considered in light of the historically few requests for bridge openings during the time periods that are proposed for one hour advance notice service.

DATES: Comments must be received on or before March 20, 1995.

ADDRESSES: Comments should be mailed to Commander (obr), First Coast Guard District, Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, Massachusetts 02110–3350. Comments may also be hand-delivered to room 628 at the same address between 6:30 a.m. and 3 p.m., Monday through Friday, except federal holidays. The telephone number is (617) 223–8364. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Manager, Bridge Branch, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–94–150), the specific section of this proposal to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an 8½″ x 11″ unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed post card or envelope.

The Coast Guard will consider all comments received during the comment period, and may change this proposal in light of comments received. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (obr), First Coast Guard District at the address listed under ''**ADDRESSES**.'' The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information

The drafters of this notice are Mr. John W. McDonald, Project Manager, Bridge Branch and Lieutenant Commander Samuel R. Watkins, Project Counsel, District Legal Office.

Background and Purpose

The Fox Hill SR107 Bridge at mile 2.5 between Saugus and Lynn, Massachusetts, has a vertical clearance of 6′ above mean high water (MHW) and 16′ above mean low water (MLW). The existing regulations for the Fox Hill SR107 Bridge require it to open on signal at all times.

The MHD has requested authority to reduce the times when the bridge is manned by drawtenders and to provide for one hour advance notice openings when the bridge is not manned. This request by the MHD seeks relief from the unnecessary burden of manning the bridge during times of infrequent requests for bridge openings.

Discussion of Proposed Amendments

The proposed regulations for the Fox Hill SR107 Bridge will require the draw to open on signal, except that from October 1 through May 31, 7 p.m. to 5 a.m., and all day on December 25 and January 1, the draw shall open as soon as possible, but not more than one hour, after notice is given to the drawtenders either at the bridge during the time the drawtenders are on duty or by calling the number posted at the bridge.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1970) The Coast Guard expects the economic impact to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that the regulation will not prevent mariners from transiting the Fox Hill SR107 Bridge. Rather, it will only require that mariners plan their transits and provide advance notice.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this action will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). Because of the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under 5 U.S.C. 605(b) that this action, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and it has determined that this proposed regulation does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1(g); section 117.255 also issues under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.618 is amended by adding paragraph (c) to read as follows:

§ 117.618 Saugus River.

* * * * *

(c) The Fox Hill SR107 Bridge at mile 2.5 shall open on signal, except that from October 1 through May 31, 7 p.m. to 5 a.m. daily, and all day on December 25 and January 1, the draw shall open as soon as possible, but not more than one hour, after notice is given to drawtenders either at the bridge during the time the drawtenders are on duty or by calling the number posted at the bridge.

Dated: January 3, 1995.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 95–1294 Filed 1–18–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD01–94–149]

RIN 2115–AE47

Drawbridge Operation Regulations; Danvers Rivers, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing a change to the regulations governing the operation of the Beverly-Salem SR1A bridge at mile 0.0 between Salem and Beverly, Massachusetts, and the Essex County Kernwood Bridge at mile 1.0 between Peabody and Beverly, Massachusetts. Both bridges span the Danvers River. These proposed changes will allow the bridges' owner, the Massachusetts Highway Department (MHD), to reduce the number of hours in a day that the bridges will be manned by drawtenders. The changes will permit a corresponding increase in the number of hours in a day that the bridges will be unmanned and opened only upon one hour advance notice. This action is being proposed in light of the historically few requests for bridge openings during the time periods that are proposed for expanded one hour advance notice service.

DATES: Comments must be received on or before March 20, 1995.

ADDRESSES: Comments should be mailed to Commander (obr), First Coast Guard District, Captain John Foster Wiliams Federal Building, 408 Atlantic Ave., Boston, Massachusetts 02110–3350. Comments may also be hand-delivered to room 628 at the same address between 6:30 a.m. and 3 p.m., Monday through Friday, except federal holidays. The telephone number is (617) 223–8364. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Manager, Bridge Branch, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written views, comments data, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–94–149), the specific section of the proposal to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an 8½ x 11 unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed post card or envelope.

The Coast Guard will consider all comments received during the comment period, and may change this proposal in light of comments received. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (obr), First Coast Guard District at the address listed under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information

The drafters of this notice are Mr. John W. McDonald, Project Manager, Bridge Branch, and Lieutenant Commander Samuel R. Watkins, Project Counsel, District Legal Office.

Background and Purpose

The Beverly-Salem SR1A Bridge at mile 0.0 between Salem and Beverly, Massachusetts, has a vertical clearance of 10′ above mean high water (MHW) and 19′ above mean low water (MLW). The Essex County Kernwood Bridge at mile 1.0 between Peabody and Beverly, Massachusetts, has a vertical clearance of 8′ above MHW and 17′ above MLW.

The MHD has requested authority to reduce the times when the bridges are manned by drawtenders and to increase the times when the bridges are on a 1 hour advance notice for openings. This request by the MHD seeks relief from the unnecessary burden of manning the bridges during times of infrequent requests for bridge openings.

Discussion of Proposed Amendments

Under the proposed regulations for the Beverly-Salem SR1A Bridge, from October 1 through April 30, the daily period slated for 1 hour advance notice openings would be expanded by 4 hours, from 8 p.m. until 5 a.m.

Similarly, under the proposed regulations for the Essex County Kernwood Bridge, from October 1 through April 30, the daily period slated for 1 hour advance notice openings would be expanded by 5 hours, from 7 p.m. until 5 a.m.

These proposed changes would relieve the MHD of the burden of manning the bridges with drawtenders during times of infrequent requests for bridge openings. The operating regulations for the MBTA/AMTRAK Bridge at mile 0.05 would remain unchanged.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that the regulation will not prevent mariners from transiting the Beverly-Salem and Essex County Kernwood Bridges. Rather, it will only require mariners to plan their transits and provide advance notice.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this action will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). Because of the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under 5 U.S.C. 605(b) that this action, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and it has determined that this proposed regulation does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.595, paragraphs (a)(4), (b)(1), and (c) are revised and paragraph (d) is added to read as follows:

§ 117.595 Danvers River.

(a) * * *

(4) Except as provided in paragraphs (b) through (d) of this section, the draws shall open on signal.

(b) * * *

(1) The draw shall open on signal, except that from May 1 through September 30, 12 midnight to 5 a.m. and from October 1 through April 30, 8 p.m. to 5 a.m., and all day on December 25 and January 1, the draw shall open as soon as possible, but not more than one hour, after notice is given to the drawtenders either at the bridge during the time the drawtenders are on duty or by calling the number posted at the bridge.

* * * * *

(c) The draw of the Massachusetts Bay Transportation Authority (MBTA)/ AMTRAK Bridge at mile 0.05 between Salem and Beverly shall open on signal, except that from 12 midnight to 5 a.m. daily and all day on December 25 and January 1, the draw shall open as soon as possible, but not more than one hour, after notice is given to the drawtenders either at the bridge during the time the drawtenders are on duty or by calling the number posted at the bridge.

(d) The Essex County Kernwood Bridge at mile 1.0 shall open on signal, except that from May 1 through September 30, 12 midnight to 5 a.m. and from October 1 through April 30, 7 p.m. to 5 a.m., and all day on December 25 and January 1, the draw shall open as soon as possible, but not more than one hour, after notice is given to the drawtenders either at the bridge during the time the drawtenders are on duty or by calling the number posted at the bridge.

Dated: January 3, 1995.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 95–1293 Filed 1–18–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 95–5–6651; FRL–5141–7]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District and San Bernardino County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP), which concern the control of volatile organic compound (VOC) emissions from the loading, transfer, and storage of organic liquids, including gasoline.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPRM) will incorporate these rules into the federally approved SIP. EPA has evaluated each of these rules and is proposing to approve them under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before February 21, 1995.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

Mojave Desert Air Quality Management District (formerly San Bernardino County APCD), 15428 Civic Drive, Suite 200, Victorville, CA 92392–2383.

FOR FURTHER INFORMATION CONTACT: Duane F. James, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1191.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being proposed for approval into the California SIP include: Mojave Desert Air Quality Management District's (MDAQMD) Rule 461, ''Gasoline Transfer and Dispensing,'' and Rule 462, ''Organic Liquid Loading,'' and San Bernardino County Air Pollution Control District's (SBCAPCD) Rule 463, ''Storage of Organic Liquids.'' SBCAPCD's Rule 463 was adopted and submitted prior to the district being renamed to the MDAQMD. These rules were submitted by the California Air Resources Board to EPA on January 11, 1993 (Rule 463) and July 13, 1994 (Rules 461 and 462).

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the former SBCAPCD.[1] 43 FR 8964; 40 CFR 81.305. Because this area was unable to meet the statutory attainment date of December 31, 1982, California requested

[1] On July 1, 1993, the SBCAPCD was officially renamed as the MDAQMD. Rule 463 is still identified with the SBCAPCD for completeness.

under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.238, 52.222. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the above district's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991, for states to submit corrections of those deficiencies. Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[2] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The MDAQMD is classified as severe;[3] therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on January 11, 1993, and July 13, 1994, including the rules being acted on in this document. This document addresses EPA's proposed action for MDAQMD's Rule 461, ''Gasoline Transfer and Dispensing,'' and Rule 462, ''Organic Liquid Loading,'' and SBCAPCD's Rule 463, ''Storage of Organic Liquids.'' MDAQMD adopted Rules 461 and 462 on May 25, 1994, and SBCAPCD adopted Rule 463 on November 2, 1992. These submitted rules were found to be complete on March 26, 1993 (Rule 463) and July 22, 1994 (Rules 461 and 462) pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V[4] and are being proposed for approval into the SIP.

These three rules work in concert to reduce VOC emissions by requiring submerged fill pipes and vapor recovery systems for the transfer and storage of organic liquids, including gasoline. VOCs contribute to the production of ground level ozone and smog. The rules were adopted as part of the district's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for these rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 2. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTG's are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to ''fix-up'' their RACT rules. See section 182(a)(2)(A). The following CTG's are applicable to these rules: (1) ''Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals (EPA–450/2–77–026),'' (2) ''Control of Volatile Organic Emissions from Bulk Gasoline Plants (EPA–450/2–77–035),'' (3) ''Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks (EPA–450/2–77–036),'' (4) ''Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks (EPA–450/2–78–047),'' and (5) ''Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems (EPA–450/2–78–051).'' Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 2. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP. Rules 461, 462, and 463 include the following significant changes from the current SIP:

- Applicability sections.
- Test methods for compliance determinations.
- Recordkeeping requirements.
- Exemptions consistent with the CTG's.
- Definitions of terms used in the rules.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, MDAQMD's Rule 461, ''Gasoline Transfer and Dispensing,'' and Rule 462, ''Organic Liquid Loading,'' and SBCAPCD's Rule 463, ''Storage of Organic Liquids,'' are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, it

[2] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice'' (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTG's).

[3] The Mojave Desert Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA amendments of 1990. See 55 FR 56694 (November 6, 1991).

[4] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 6, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–1318 Filed 1–18–95; 8:45 am]

BILLING CODE 6560–50–W

40 CFR Parts 152, 174, and 180

[OPP–300378; FRL–4932–6]

RIN 2070–AC02

Plant-Pesticides Subject to the Federal Insecticide, Fungicide, and Rodenticide Act; Proposed Exemptions From the Requirement of a Tolerance for Plant-Pesticides and Nucleic Acids and Viral Coat Proteins Produced in Plants under the Federal Food, Drug, and Cosmetic Act; Proposed Rules; Extension of Comment Periods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment periods.

SUMMARY: EPA is extending the comment period for a proposed rule for plant-pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and three proposed exemptions from the requirement of a tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA). The proposed rule and proposed exemptions from tolerance requirements describe how EPA proposes to address pesticidal substances produced by plants under FIFRA and FFDCA.

DATES: Comments identified by the docket control numbers [OPP– 300367a, 300368a, 300369a, 300371a] must be received on or before February 23, 1995.

ADDRESSES: Submit written comments by mail to: Program Resources Section, Public Response and Program Resources Branch, Field Operations Division (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: By mail: Bernice Slutsky, Science and Policy Staff, Office of Prevention, Pesticides and Toxic Substances (7101), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. E–627, 401 M St., SW., Washington, DC, (202–260–6900).

SUPPLEMENTARY INFORMATION: The substances plants produce to protect themselves against pests and disease are considered to be pesticides under the FIFRA definition of ''pesticide.'' These substances, along with the genetic material necessary to produce them are designated ''plant-pesticides'' by EPA. In the Federal Register of November 23, 1994, EPA published: (1) A proposed policy statement that describes EPA's regulatory approach for plant-pesticides under FIFRA and FFDCA (''Proposed Policy; Plant-Pesticides Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Federal Food, Drug, and Cosmetic Act'') (59 FR 60496); (2) a proposed regulatory amendment that would describe categories of plant-pesticides that are subject to or exempt from regulation under FIFRA and clarifies the status of plants that produce plant-pesticides (''Plant-Pesticides Subject to the Federal Insecticide, Fungicide, and Rodenticide Act; Proposed Rule'') (59 FR 60519); (3) a proposed exemption from the requirement of a tolerance under FFDCA for categories of plant-pesticides that do not result in significantly different dietary exposures (''Plant-Pesticides; Proposed Exemption From the Requirement of a Tolerance Under the Federal Food, Drug, and Cosmetic Act'') (59 FR 60535); (4) a proposed exemption from the requirement of a tolerance under FFDCA for nucleic acids, including deoxyribonucleic and ribonucleic acids (''Plant-Pesticides; Proposed Exemption From the Requirement of a Tolerance Under the Federal Food, Drug, and Cosmetic Act for Nucleic Acids Produced in Plants,'') (59 FR 60542); and (5) a proposed exemption from the requirement of a tolerance under FFDCA for viral coat proteins (''Plant-Pesticides; Proposed Exemption From the Requirement of a Tolerance Under the Federal Food, Drug, and Cosmetic Act for Viral Coat Proteins Produced in Plants'') (59 FR 60545). In response to requests by interested parties, EPA is extending the comment period for the four proposals by 30 days. Elsewhere in this issue of the Federal Register, EPA is also extending the comment period by 30 days for the proposed statement of policy for pesticidal substances produced in plants (plant-pesticides) under FIFRA and FFDCA. Comments for all documents must now be received by February 23, 1995.

Comments must be filed with the corresponding docket numbers:

Docket Number	Document Name
OPP–300369a	Plant-Pesticides Subject to the Federal Insecticide, Fungicide, and Rodenticide Act; Proposed Rule
OPP–300368a	Plant-Pesticides; Proposed Exemption from the Requirement of a Tolerance Under the Federal Food, Drug, and Cosmetic Act
OPP–300371a	Plant-Pesticides; Proposed Exemption from the Requirement of a Tolerance Under the Federal Food, Drug, and Cosmetic Act for Nucleic Acids Produced in Plants
OPP–300367a	Plant-Pesticides; Proposed Exemption from the Requirement of a Tolerance Under the Federal Food, Drug, and Cosmetic Act for Viral Coat Proteins Produced in Plants

List of Subjects in 40 CFR Parts 152, 174, and 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Biotechnology pesticides, Pesticides and pests, Plants, Plant-pesticides, Reporting and recordkeeping requirements.

Dated: January 12, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 95–1319 Filed 1–18–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 4E4349/P599; FRL–4932–9]

RIN 2070–AC18

Pesticide Tolerance for Amitraz

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish a tolerance for residues of the insecticide/miticide amitraz and its metabolites in or on imported dried hops at 60 parts per million (ppm). AgrEvo (formerly Nor Am) Chemical Co. requested this regulation to establish the maximum permissible level of residues of the insecticide/miticide in or on the commodity.

DATE: Comments, identified by the document control number [PP 4E4349/P599], must be received on or before February 21, 1995.

ADDRESSES: Comments may be submitted to: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 19, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of December 13, 1991 (56 FR 65080), which announced that Nor-Am Chemical Co., Little Falls Centre One, 2711 Centerville Rd., Wilmington, DE 19808, had submitted a food additive petition (FAP 2H5618) to EPA requesting that the Administrator, pursuant to sections 408(d) and 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d) and 348, establish a tolerance for the insecticide/miticide amitraz (*N*'-[2,4-dimethylphenyl]-*N*-[[(2,4-dimethylphenyl)imino]methyl]]-*N*-methylmethanimidamide) and its metabolites *N*-(2,4-dimethylphenyl)-*N*-methyl formamide and *N*-(2,4-dimethylphenyl)-*N*-methylmethanimidamide (both calculated as the parent compound) in or on imported dried hops at 75 parts per million. There were no comments received in response to the initial notice of filing.

In the Federal Register of May 17, 1994 (59 FR 25586), the Agency issued a proposal to establish the amitraz hops tolerance at 75 ppm. No comments were received in response to this proposal; however, a concern was raised regarding the potential acute dietary risk of amitraz posed by its registered uses during reregistration under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq., and therefore the final rule was not published. To address this concern, the company provided a voluntary human study and additional residue data and proposed a lower tolerance of 50 ppm for hops. An Agency review of the data concluded that a tolerance of 60 ppm is needed given the existing application rates.

EPA had not proposed to establish a tolerance for amitraz on hops in the past because dried hops have been considered a processed food requiring a section 409 tolerance and EPA was concerned that a section 409 tolerance for amitraz might be prohibited by the section 409 Delaney anti-cancer clause. Recently, EPA reclassified dried hops as a raw agricultural commodity (see proposed rule at 59 FR 25586; May 17, 1994).

The data submitted in the petition and all other relevant material have been evaluated. The toxicology data considered in support of the tolerance was described in the May 17, 1994 proposed rule. In June 1994, a voluntary human study was submitted. This study indicated changes in systolic blood pressure, body temperature, ECG rate, and psychomotor performance observed from a single oral dose at the 0.125 mg/kg (the NOEL) level to be minimal and transient.

As directed by FIFRA section 4(g)(2)(A), the database for amitraz has undergone a reevaluation and reassessment as part of the reregistration process. It was determined that a combined developmental, neurological, and reproduction toxicity study in rats is needed to provide confirmatory data. The amitraz Reregistration Eligibility Document (RED), which is expected to be released shortly, will require this study.

The nature of the residue in plants and livestock is adequately understood. The residues of concern are amitraz and its metabolites containing the 2,4-dimethylaniline moiety. The residue analytical method is a common moiety method which converts amitraz and its two metabolites to 2,4-dimethylaniline with determination of the residues by gas chromatography using 63Ni electron detection. The method has been published in FDA's PAM II. Magnitude of the residue data show that total amitraz residues on dried hops are not expected to exceed the proposed tolerance when amitraz is used as directed. There are currently no actions pending against continued registration of this chemical.

The Agency has prepared a dietary risk assessment for the amitraz RED, which is expected to be released shortly. Amitraz is a possible human carcinogen based on a 2-year mouse carcinogenicity study. The current dietary risk determined during preparation of the RED was calculated to be 1.4×10^{-6} (for the cottonseed/eggs/poultry use, plus pears, cattle, swine, and honey/beeswax). The addition of the use on hops will add 1.2×10^{-6} to this risk, assuming exposure over a lifetime of 70 years for a total lifetime dietary cancer risk from exposure to amitraz residues of 2.6×10^{-6}. The use of amitraz on imported hops is expected to still keep the overall lifetime dietary cancer risk within the negligible range.

The anticipated residue contribution (ARC) for this chemical from published tolerances utilizes 1 percent of the reference dose (RfD). The proposed tolerance will contribute 0.000025 mg/kg/bwt/day utilizing an additional 1 percent of the RfD. This results in a total utilization of 2 percent of the RfD.

As stated previously, the May 17, 1994 proposed rule to establish a tolerance for amitraz in/on imported hops was not finalized because the amitraz reregistration activities indicated the potential for an acute risk of concern. Using the voluntary human study submitted by the company, a revised dietary exposure analysis was performed assessing the acute risk from the proposed use of amitraz on dried hops. Acute exposure from beer was calculated by multiplying individual, single day consumption estimates taken from the USDA's 1977-1978 Nationwide Food Consumption Survey by a residue of 0.22 ppm to derive a distribution of acute exposures for the two subgroups previously identified as being most highly exposed to amitraz through beer, ''Males 13 years and older'' and ''Females 13 years and older.'' Because hops are mixed as part of the brewing process, a residue value in beer reflecting the average residue in hops was deemed more appropriate than using a residue value in beer based on the tolerance on hops.

The Margin of Exposure (MOE) is a measure of how closely exposure comes to the NOEL (the highest dose at which no effects were observed in the study), and is calculated as the ratio of the NOEL to the exposure (NOEL/exposure = MOE). The Agency normally considers an MOE of 10 or greater acceptable when the NOEL is based on a human study. MOEs at the 99th percentile from amitraz in beer were 10 for ''Males, 13 +'' and 15 for ''Females, 13 +''. Only those consumers within both subgroups having consumption greater than the 99th percentile consumer would have MOEs for beer which are below 10. Additionally, the acute risk assessment assumed that 100 percent of all imported beer and 100 percent of all imported hops used in domestic beer production would contain amitraz. The Agency considers this to be extremely unlikely.

The Agency expects a brewing study providing additional residue data to be submitted which may enable further refinement and reevaluation of the risk. At this time, no residue data supporting domestic use have been submitted for the U.S., and there are no U.S. registrations for the use of amitraz on hops. The Agency will not consider any applications for registration of amitraz to be used on hops in the U.S., nor will EPA consider any Special Local Needs Registrations (FIFRA section 24(c)) until acceptable U.S. residue data are submitted and reviewed and a risk/benefit analysis is performed.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under FIFRA, as amended, which contains any of the ingredients listed herein may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with FFDCA section 408(e).

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 4E4349/P599]. All written comments filed in response to this petition will be available in the Public Docket and Freedom of Information Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: January 12, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that part 180 be amended as follows:

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.287, by amending the table therein by adding and alphabetically inserting the raw agricultural commodity dried hops, to read as follows:

§ 180.287 Amitraz; tolerances for residues.

* * * * *

Commodity	Parts per million
* * * * *	
Hops, dried	60
* * * * *	

[FR Doc. 95–1320 Filed 1–18–95; 8:45 am]

BILLING CODE 6560–50–F

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Eligibility

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: The Legal Services Corporation (''LSC'' or ''Corporation'') proposes to amend regulations relating to eligibility for LSC-funded legal services. This regulation has been substantially revised and reordered, in part to simplify the regulation and clarify current Corporation policy and in part to revise Corporation policy, particularly with respect to access by LSC to client records.

DATES: Comments may be submitted on or before March 20, 1995.

ADDRESSES: Comments may be submitted to the Office of General Counsel, Legal Services Corporation, 750 First St., NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Victor Fortuno, General Counsel, (202) 336–8810.

SUPPLEMENTARY INFORMATION: The Operations and Regulations Committee of the LSC Board (''Committee'') held public hearings on June 20, 1994, and September 17, 1994, in Washington, DC, to consider a draft of proposed revisions to 45 CFR part 1611, LSC's regulations on eligibility for LSC-funded legal assistance. At a meeting in Washington, DC, on October 28, 1994, the Committee approved a draft to be published in the Federal Register as a proposed rule for public comment.

Under this proposal, part 1611 has been substantially revised and reordered to make the regulation less complex and easier for recipients to apply. While there are numerous proposals for substantive change, the majority of the revisions reflect the Committee's desire to make this rule more comprehensible and less subject to confusion and misinterpretation than is the current regulation. Throughout the rule, there are slight changes in language to clarify the rule or to make it consistent with

prior interpretations. Unless noted below, these minor revisions do not make any substantive change in the rule and are not described in detail.

The Committee recognizes that Congress may consider legislation that would amend the LSC Act and reauthorize appropriations for the Corporation. Whenever Congress does pass a new LSC Act, the Corporation's regulations will be revisited and revised accordingly.

The Corporation is extending the customary 30-day comment period to 60 days.

Section Analysis

Authority

This section has been revised to include a reference to Sec. 1006(b)(3) of the LSC Act, 42 U.S.C. 2996e(b)(3). This provision states that the Corporation shall not interfere with any attorney in carrying out the attorney's professional responsibilities to a client or abrogate the authority of a State or other jurisdiction to enforce the standards of professional responsibility applicable to attorneys in that jurisdiction.

Section 1611.1 Purpose

The purpose section was revised to clarify that it is intended to deal with financial and other factors that may be used to determine eligibility for LSC-funded legal services. In addition, the Committee removed the language in the current regulation that gives preference to those least able to obtain legal assistance. Although the original LSC Act contained language indicating some priority for those who were poorest, that language was deleted when the Act was reauthorized in 1977. There is nothing in the current Act that requires a program to give preference to those ''least able to obtain legal assistance'' and the Committee felt that it should not be a part of the statement of purpose for the regulation.

Section 1611.2 Definitions

Section 1611.2(a) ''Applicable Rules of Professional Responsibility''

This new definition was added to make it clear that the references in the regulation are intended to refer to the rules of ethics and professional responsibility applicable to attorneys in the jurisdiction where the recipient either provides legal services or maintains its records. If more than one jurisdiction is involved and there is a difference in the rules of disclosure between the jurisdictions, the Committee wished the Commentary to make clear that, in the Corporation's view, the rule that was more protective of client confidentiality should govern the disclosure of information to the Corporation. It recognized, however, that the applicable law governing conflict of laws may differ from that view and would control. The Corporation seeks comments regarding any conflict of laws issues that might arise. The new definition is consistent with section 1006(b)(3) of the Act that states that LSC cannot abrogate the authority of the pertinent jurisdiction to enforce the applicable rules.

Section 1611.2(b) ''Assets''

This new definition was intended to give programs some guidance as to what needs to be included in a program's consideration of an applicant's assets, but leaves substantial discretion to the recipient to come up with a description of assets that meets local concerns and conditions. This is a minimal definition that includes only liquid resources, but local programs may include non-liquid assets, as are included under the current requirement, if they decide that inclusion is appropriate. LSC added the regulatory requirement for consideration of non-liquid assets when it revised part 1611 in 1983, but the LSC Act, section 1007(a)(2)(B)(i), only requires that recipients take into account liquid assets.

The proposed definition requires inclusion of only those liquid assets or other resources that are ''readily convertible to cash, which are currently and actually available to the applicant and which could be used to hire private counsel.'' Thus, assets that are in the applicant's name, but are being held in trust until the applicant reaches a certain age or status need not be considered. Similarly, assets that are controlled by a guardian or conservator need not be considered, although income from the trust that is distributed by the guardian or conservator to the applicant should be included in total cash receipts. A recipient could make a case-by-case determination of whether resources that could be sold, pawned or mortgaged should be considered to be resources that are ''readily convertible to cash'' or whether an individual should be required to borrow against a pension or other asset.

Section 1611.2(c) ''Governmental program for low-income individuals or families''

The Committee changed the term that is used in the regulation from ''governmental program for the poor'' although the definition remains unchanged.

Section 1611.2(d) ''Income''

The Committee revised this definition to include total cash receipts of a ''household'' as an alternative to ''family unit,'' and to permit programs to choose to use whichever term is more appropriate for the individual or local circumstances. Income is reviewed on an annual basis, rather than at a particular point in time because the Federal Poverty Guidelines, upon which the maximum income levels are based, are stated in terms of annual income. Thus, if an applicant for services currently has a low-wage job, but was unemployed with no other income for several months, income should be adjusted to take account of overall income over the prior year. Similarly, if an applicant's income is sporadic, as with temporary or day workers, income should be estimated on an annual basis, rather than on income for the current week or month. The Committee requests comments from the public on any additional guidance that may be needed by field programs in applying this definition.

Section 1611.2(e) ''Total Cash Receipts''

The Committee revised this definition by removing much of the detailed information contained in the current definition and adding general language that describes the kind of resources that should be considered as part of income. The Committee felt that by including the detail in the regulation itself, the language could be viewed as a rigid framework for compliance that did not permit consideration of other possible income sources or the particular circumstances of the individual applicant. The new definition makes it clear that ''total cash receipts'' means money received by and currently available to an applicant for services. Thus, it would not include food or rent in lieu of wages, rent subsidies, food stamps, health insurance premiums paid by an employer, Medicaid payments to a health care provider, or other non-cash benefits or payments made to a third party on behalf of the applicant, over which the applicant has no control. The revised language refers to ''net income from self-employment'' rather than specifying the deductions. Finally, the revised language refers to ''other regular or recurring sources of financial support that are actually available to the applicant.'' These would include such things as social security, public or private pension payments; regular insurance or annuity payments; unemployment or worker's compensation payments; strike benefits

from union funds; veterans benefits; alimony, child support, military family allotments or other regular support from an absent family member or some other third party not living in the household; or income from dividends, interest, rents, royalties, estates or trusts that are available to or used for the benefit of the applicant for service.

Total cash receipts would not include the income of an absent, non-contributing spouse, nor would it include such one-time items as money withdrawn from a bank, tax refunds, gifts, insurance payments or cash settlements for injuries sustained unless paid out over time on a regular basis. These one-time items, however, should be considered by the recipients when reviewing an applicant's assets before determining eligibility. The question of how to treat income taxes that are withheld from salary or paid periodically is dealt with in a later section. The current regulation includes ''training stipends'' as part of ''income.'' A recipient should be able to decide whether a particular training stipend, fellowship, scholarship or similar payment constitutes income to the applicant. That determination may depend on whether the payment is paid to the applicant or directly to an educational or training institution; whether the payment is intended to cover tuition or living expenses; and other similar considerations. Finally, a recipient should be able to determine whether money is actually and currently available to the applicant. For example, money paid in trust to an applicant, but not available until the applicant reaches a particular age or status, may not be income.

Section 1611.3 Eligibility Policies or Guidelines

Section 1611.3(a)

This subsection is based on language that appears in § 1611.5(a) of the current part 1611, but it is substantially revised and relocated. The provision does not simply refer to the annual income ceiling, which is dealt with in the next section. Rather, it refers to the overall set of policies or guidelines that a recipient follows to establish eligibility for LSC-funded services, including both financial and non-financial considerations. While the Committee agreed that a recipient ought to review its annual income ceilings annually in light of revisions to appendix A, the Committee felt that the eligibility guidelines themselves needed to be reviewed less frequently. An annual review requirement, such as that under the current regulation, often encourages a mere *pro forma* review. The Committee felt that a less frequent review would encourage more thoughtful analysis.

Section 1611.3(b)

This subsection is based on § 1611.5(b)(2)(D) of the current regulation, but the provision has been moved up in the proposal to guide the recipient through the process of determining financial eligibility in a more logical manner. It makes it clear that under the LSC Act recipients must consider an applicant's assets before determining that the applicant is financially eligible.

Section 1611.3(c)

This subsection is based on the remaining factors listed in § 1611.5(b) of the current regulation. It discusses those additional factors that a recipient may consider before determining that an applicant who might be financially eligible on the basis of income alone should be served. While these are factors that the recipient would generally use to disqualify an otherwise financially eligible applicant, the Committee recognized that they might also be weighed against one another to permit a recipient to determine that a particular applicant should be served. For example, a recipient might interview an applicant for services whose current income is below the recipient's income ceiling, but who anticipates a significant increase in income because he or she has been promised a job that is scheduled to start in several weeks. Looking only at income and income prospects, the recipient might determine not to provide service to that applicant. If, however, the applicant is seeking emergency legal assistance to prevent the loss of the family's home, the recipient could weigh the severity of the consequences for the individual if legal assistance is denied and decide that, on balance, it should undertake the representation. However, if, during the course of the representation, the promised job materializes, the recipient would have to determine whether the change in circumstances requires that assistance be discontinued, pursuant to § 1611.10.

The Committee added language regarding the recipient's priorities, as well as other case acceptance criteria to make it clear that financial eligibility based on income and assets does not create an entitlement to legal services. Financial eligibility is only one piece in the puzzle that determines whether a recipient will actually represent any particular applicant for service. A recipient should look to its own priorities as well as any other case acceptance criteria that it has adopted to manage its caseload, including conflicts considerations and factors used in determining whether a case has sufficient merit to justify expenditure of scarce resources.

Section 1611.4 Annual Income Ceilings

The Committee changed the name of this section, which is found in § 1611.3 in the current regulation, from ''maximum income level'' to ''annual income ceilings.'' The term ''maximum'' is used twice in this section of the current regulation with respect to two different sets of numbers and is confusing and misleading. Under the current rule, LSC is required to set a ''maximum'' income level, currently 125% of the Federal Poverty Income Guidelines, but recipients can set their own ceilings (or maximum) on income at any level at or below the LSC ''maximum.'' In addition, the current regulation permits recipients to make exceptions to the ''maximum'' income level to take account of factors that limit an applicant's ability to afford legal services, so the recipient's income level may not really represent a maximum. The Committee felt that the use of the term ''annual income ceilings'' was more appropriate to describe how the section was to be applied, and it is consistent with the term ''asset ceilings'' that is used later in the regulation.

Section 1611.4(a)

The Committee added language to emphasize that the recipient's annual income ceiling is applicable only to legal assistance supported by LSC funds. Other funders may set their own income eligibility levels, and many have done so or have based eligibility for services on some other basis, such as age or status. Some funders have chosen to adopt LSC financial eligibility guidelines to determine eligibility for services supported with their funds. This additional language does not represent any substantive change from current law, but does emphasize what was not always clear under the current regulation, i.e., that other funders are not bound by LSC eligibility guidelines and recipients may use whatever eligibility standards the non-LSC funder prescribes.

The Committee also added language to make it clear that both income and assets are to be used to determine financial eligibility, but that financial eligibility does not entitle a particular applicant to receive legal services, since a recipient may also consider other

factors in making a determination of whether or not to provide services.

Section 1611.4(b)

The language of this section was revised to clarify its meaning, but no substantive changes are intended. The Committee felt that while the recipient's annual income ceiling did need to be reviewed annually to insure that the program had considered the current figures in appendix A, programs should not be required to raise their income levels consistent with the changes in Appendix A.

The Committee discussed whether it should consider raising the LSC maximum for income ceilings from the current 125% of the Federal Poverty Guidelines to take account of the reality that those guidelines have not kept up with the cost of living nationally and that people need substantially more than 125% of those guidelines to live above poverty. At the same time, the Committee acknowledged that limited resources prevent recipients from serving most of the applicants for service who are eligible at 125% of the official poverty level. They also discussed whether they should revisit the issue of including some differential to take account of urban and rural differences in the cost of living. Section 1007(a)(2)(A) of the LSC Act requires LSC to take account of family size, rural and urban differences as well as substantial cost-of-living variations. At present there are different levels depending on family size, and there are higher income levels to take account of the acknowledged higher cost of living in Alaska and Hawaii, but there is no differential for urban versus rural poverty. The Committee decided that it would recommend no change for purposes of revising part 1611, but recommended that the Board look into the issue and decide whether it wished to make any changes. The Committee welcomes comments on these issues.

Section 1611.4(c)

This section was revised to reflect the fact that the ''cost of living'' factor is the only factor listed in this provision that is specifically required by the Act to be considered by recipients in setting the annual income ceiling. Other factors that are relevant to a particular recipient must also be considered but it will be up to the recipient to determine which other factors are relevant to its service area.

Section 1611.4(d)

This subsection is based on § 1611.3(d) of the current rule. Additional language was added to emphasize that the recipient's annual income ceiling is applicable only to legal assistance supported by LSC funds. Legal assistance supported in whole by non-LSC funds may be provided to applicants for service who do not meet LSC income guidelines. Other funders may set their own income eligibility levels. Nevertheless, to the extent that LSC funds are used to support the legal assistance, only financially eligible clients may be served.

The Committee wanted the Commentary to make clear that this section does not prevent a recipient from using LSC funds to support its intake system, even though some applicants for service will clearly be ineligible. Performing intake to determine eligibility is not the same as providing legal assistance. Nor does the section prohibit recipients from providing some limited service to applicants who are financially ineligible. For example, if after completing intake, a recipient finds an applicant to be ineligible, the recipient may provide the applicant with referrals to other sources of legal or other assistance that could be helpful, may provide pamphlets or other written materials that are available to assist the applicant, or may provide some simple, basic advice that would enable the applicant to handle his or her own problem without legal assistance.

Deletion of Current § 1611.5 Determination of Eligibility

The provisions of this section have been incorporated into other sections of the proposal to simplify the regulation and give it a more logical and easy-to-follow structure.

Section 1611.5 Authorized Exceptions to the Recipient's Annual Income Ceilings

This section includes subsections from §§ 1611.4 and 1611.5 of the current regulation, but they have been reordered and revised. These factors, which may be considered here, should be viewed as limitations on an applicant's use of his/her income that would permit a recipient to deem the applicant as falling below the income ceiling.

Section 1611.5(a)

The changes were designed principally to simplify the language of the regulation, although the revisions contained in the introductory language to the section do provide recipients with slightly more flexibility in deciding which applicants for service whose unadjusted income exceeds 125% of the official poverty line nevertheless may be deemed to be financially eligible. The current regulation permits consideration of applicants for service whose unadjusted income is below 150% of the national LSC eligibility level, or 187.5% of the official poverty line. This proposal simplifies the calculation and raises the outside limit for unadjusted income to 200% of the official poverty line. The introduction also makes it clear that the applicant must still meet the asset limit test in § 1611.3(b) and that the recipient should still consider the factors in § 1611.3(c) before deciding whether to serve any particular person.

Section 1611.5(a)(1)

The language of this subsection was revised to make it clear that recipients could serve persons up to 200% of poverty if the person was seeking to maintain benefits as well as to secure them in the first instance.

Section 1611.5(a)(2)

This new subsection was added to permit recipients to serve persons with incomes up to 200% of poverty to secure or maintain disability benefits, but only if without those benefits the person would be otherwise eligible. The Committee felt that for many disabled persons, disability benefit programs provided only subsistence support and those individuals should be treated in the same way as those seeking to secure or maintain benefits available on the basis of financial need. The Committee also recognized, however, that many disabled individuals who are eligible for disability benefits may not be particularly economically disadvantaged, and should not be eligible for legal assistance simply by virtue of their eligibility for those benefits.

Section 1611.5(a)(3)

This subsection lists those factors that a recipient should consider in making a determination that a particular applicant for service whose income is between 125% and 200% of poverty should be deemed eligible for LSC-funded services. The factors are, with several changes discussed below, the same as those factors that appear in § 1611.5 (b) of the current regulation.

Paragraph (B) has been revised to make it clear that if a person's medical expenses are reimbursed, through insurance or a government program such as Medicare or Medicaid, those reimbursed expenses cannot be deducted in determining eligibility; if, however, if a person has paid bills and is awaiting future reimbursement, those expenses could be deduced. In that case, when the actual reimbursement is

received, there would be an increase in assets and a potential change in circumstances, see § 1611.10. In addition, the language has been changed so that it is clear that a person whose income is devoted primarily to payment of medical expenses may be considered eligible for LSC services without regard to income, but only if the applicant's income does not exceed the recipient's annual income ceiling after unreimbursed expenses are deducted.

Paragraph (C) has been revised in several respects. First, the proposal removes the discrimination against the working poor that is inherent in the existing rule, which does not exclude current taxes from the calculation of available income. Second, since alimony and/or child support payments made to a current or former spouse or custodial parent are included in the current definition of income for those who receive them, the Committee agreed that they should also be deducted from income for those who pay them. Another issue that has arisen from time to time is the treatment of rent versus mortgage payments under this provision. In general, rent for housing has not been included as a fixed obligation under this section, but several General Counsel's opinions have treated mortgage payments as fixed debts, creating a discrimination against renters in favor of homeowners. In order not to discriminate against renters, both rent and mortgage payments should be treated the same way. The Committee seeks comments on whether both rent and mortgage payments should be permitted as factors. The Committee also seeks comments on any other types of fixed debts or obligations that should be specifically included in the language of the rule or in the Commentary.

Paragraph (D) has been revised to provide explicitly that educational or job training expenses necessary to prepare a person for work should be treated the same as expenses related to actual employment.

Paragraph (E) has been revised to make it clear that not all expenses that can reasonably be attributable to age or disability are deductible, but only those that are unusual. Programs can make that determination on a case-by-case basis.

Paragraph (F) has been revised to make it clear that the recipient has discretion to consider other factors to deem a particular applicant eligible for services, even though the applicant is over the program's annual income ceiling, but below 200% of poverty.

Section 1611.5(b)

The Committee proposes to revise the provision in the current regulation that requires recipients to maintain specific documentation relating to decisions to provide representation to individuals whose income is between 125% and 187.5% of poverty. The Committee believes that requiring the recipient to keep this information in the client's file, as is the case under the current regulation, could interfere with LSC's ability to have access to the information that it needs without going into the client case files and possibly compromising confidentiality. Thus, the record that the recipient keeps to meet the requirement of this section for purposes of informing LSC about the exceptions should be maintained separate from any client case files. The Committee also believes that the current provision does not contain sufficient protection to insure that LSC would not have access to any client information that should be protected under applicable rules of professional responsibility, and has incorporated a reference to § 1611.8(d) that delineates the parameters of LSC's access to such information. The Committee noted that, under the proposed regulation, the applicable rules were those of the jurisdiction where the records were kept or where the services were provided, whichever were more protective of the client's privacy. However, the Corporation seeks comments on any conflict of laws questions that would be raised by the proposed provision.

Section 1611.6 Asset Ceilings

Section 1611.6(a)

The requirement for annual establishment of asset ceilings and transmittal to LSC has been deleted in keeping with the Committee's effort to eliminate unnecessary reporting requirements. Compliance with the asset ceiling guideline requirement can be assured through periodic monitoring, self-assessments, or other compliance processes. The proposed revised subsection requires that recipients review their asset ceilings as part of the overall review of eligibility policies or guidelines that must be done at least once every three years under § 1611.3(a) of this proposed regulation. In addition, language has been added to make it clear that asset guidelines must be considered in determining eligibility for service, whether the applicant's income is below 125% of poverty or below 200% of poverty. Finally, the Committee deleted the language that required recipients to consider non-liquid assets. The LSC Act, section 1007(a)(2)(B)(i), only requires that LSC guidelines ensure that recipients take into account liquid assets; it does not mention non-liquid assets. When part 1611 was amended in 1983, LSC added the requirement for consideration of non-liquid assets. When read with the definition of assets contained in § 1611.2, this proposal goes back to the original treatment of assets in the first regulation and in the LSC Act.

Section 1611.6(b)

The Committee deleted the specific items that the current regulation requires be considered in establishing asset guidelines and those that the current regulation permits to be exempted from the asset guidelines. The Committee felt that this level of detail was not required by the Act and was inappropriate to include in the regulation, and that recipients should be able to establish asset guidelines based on their determination of local conditions, with flexibility to consider the circumstances of a particular applicant for service as well as local economic conditions and other local concerns. In addition, the Committee felt that it was appropriate to explicitly permit recipients to look to other existing federal or state asset exemption schemes for guidance in setting their own guidelines.

Section 1611.6(c)

The language of this subsection has been revised to correct a reference in the current regulation to ''minimum'', rather than ''maximum'' asset ceilings. In addition, the subsection was revised to make it clear that the director of a recipient could designate another staff member to make the determination to waive the asset ceilings in unusual situations, and to remove the requirement that documentation for such waivers be maintained in the individual client's file. This was done to protect materials in the case file from inadvertent and improper disclosure to LSC.

Section 1611.6(d)

This documentation provision has been revised to refer to § 1611.8(d) to describe the general limitations on LSC's access to records and information.

Section 1611.7 Group Eligibility

This proposed section deals with the issue of group eligibility that is addressed in § 1611.5(b)(2)(C) of the current regulation. The Committee decided to treat this issue in a separate section to make it clear that different criteria apply to the consideration of whether or not a group is eligible for

LSC-funded legal assistance. This proposal incorporates a number of revisions to the current language. This new language is based on the original group representation provision that was in effect from 1976 until 1983. While the new proposal is based on the 1976 provision, there are several changes. In order to clarify the provision, the order was changed and some of the language was revised.

Section 1611.7(a)

The Committee added a reference to ''financial'' eligibility of group members in paragraph (1) To make it clear that group members had only to be financially eligible for services, not that they would actually receive services for a particular matter. Paragraph (2) which includes the ''primary purpose'' provision, was revised to make it clear that a group could be served as long as its main function or activity is the furtherance of the interests that benefit people in the community who would be eligible for legal assistance under the Act, and the representation relates to such a function or activity.

Section 1611.7(b)

This new provision was added to emphasize that recipients may use non-LSC funds to provide legal assistance to groups that do not meet the criteria of this section.

The Committee discussed whether the group representation provisions were sufficient to take account of the uniqueness of Indian tribes and raised the issue of whether the regulation should include special treatment for tribes under this section. While the Committee did not propose adding any specific language to the proposal, it would welcome comments from members of the Native American community and others on the degree to which the proposed language meets the concerns of that community.

Section 1611.8 Manner of Determining Financial Eligibility.

Section 1611.8(a)

Many of the revisions in this section are intended to simply clarify the language. The principal changes relate to the role of LSC in reviewing intake forms and financial information provided to recipients by applicants for services. Under the current regulation, the Corporation has authority to approve both the forms and procedures that a recipient uses to determine eligibility. That authority is no longer contained in this proposal. In addition, the proposed § 1611.8(a) refers to § 1611.8(d) regarding LSC's access to client information.

Section 1611.8(b)

The revisions to this provision are intended to clarify the language of the provision, but no substantive changes are intended.

Section 1611.8(c)

This new provision was added to make it clear that national and state support centers can provide assistance to local field programs or co-counsel with them in cases without making independent eligibility determinations for clients referred by field programs. The support center should, of course, be able to satisfy itself that such a determination was actually made by the field program. The Committee wished to make clear that a support center was free to review a client's eligibility before undertaking representation, if it so chose, but it was not required to do so if satisfied by the actions taken by the original recipient.

Section 1611.8(d)

This subsection has been substantially revised in the proposed new regulation. The Committee believes that the provisions on access to client eligibility information contained in the current regulation may have been applied in a manner that was inconsistent with the applicable rules of professional responsibility and section 1006(b)(3) of the LSC Act that prohibits LSC from abrogating the authority of states and local jurisdictions to enforce those rules. The ABA's Standing Committee on Legal Aid and Indigent Defendants (''SCLAID'') expressed great concern about the protection of client confidences, secrets, and other information gained in the course of representation. SCLAID urged the Committee to adopt rules that would permit LSC to have access to information only in a manner consistent with the applicable rules of professional responsibility. The Committee proposal makes it clear that information disclosed by a client or applicant for service in order to establish eligibility for services should not be disclosed to LSC or to any third party without the express written permission of the client or applicant, unless disclosure is permitted by and would not violate the attorney-client privilege and the applicable rules of professional responsibility. The Committee recognized that such a provision might mean that LSC could be subject to somewhat different rules in each jurisdiction, but agreed that Congress, in enacting section 1006(b)(3) of the Act, clearly intended that the state or local rules would govern. The Committee noted that LSC would have to discharge its responsibilities for ensuring that LSC funds were used to serve only financially eligible clients and in a manner consistent with the disclosure requirements of each jurisdiction. LSC is working to develop general procedures to permit it to fulfill its obligations in this regard. The Committee welcomes comments that would assist the Corporation in designing such procedures.

Finally, the Committee proposal noted that recipients may reveal to third parties information provided by a client or applicant to establish eligibility when the disclosure of the information is implicitly authorized in order to carry out the representation, as permitted by Rule 1.6(a) of the ABA's Model Rules of Professional Conduct, subject to any variations in the rules adopted by various states or local jurisdiction. There are many situations where the client either wants such disclosures made or where it can be assumed that the client wants disclosure made in order to advance the task the lawyer has been asked to carry out on behalf of the client. Examples include sharing financial information about a client with the court or counsel for the opposing party in a divorce action where necessary to establish appropriate alimony or child support payments or with an administrative agency that has cut off welfare benefits based on the alleged existence of other income. Clearly, by seeking representation in these cases, a client has implicitly authorized the limited sharing of information needed for full representation, but has not authorized the disclosure of that information for other purposes not directly related to the case or matter.

The Committee discussed the possible need for LSC to develop a records retention policy to ensure that recipients maintained records relating to eligibility for a sufficient period to guarantee accountability. The Committee did not recommend any particular policy, but would like to receive comments on whether such a policy would be desirable and what should be included in such a policy.

Section 1611.9 Retainer Agreement

Section 1611.9(a)

While keeping the requirement for recipients to execute written retainer agreements with all clients who are represented by the recipient, the Committee decided to delete the requirement that LSC approve or reject

the particular form of a recipient's agreement. The language makes it clear that retainers are needed only when the recipient actually undertakes representation. Some forms of legal assistance, such as *pro se* clinics or community legal education, do not require the recipient to obtain retainer agreements from everyone who attends. The proposal acknowledges that many jurisdictions have their own rules or practices regarding retainer agreements, and that recipients should make sure their retainers are consistent with those rules, as well as with local practice, where applicable. Nothing in the current LSC Act requires retainer agreements, although all of the current LSC reauthorization bills would include such a requirement, and the Committee acknowledged that it is good practice in most instances to have a written retainer.

Section 1611.9(b)

The Committee decided to remove the language relating to emergencies, in recognition of the fact that there may be numerous circumstances when a recipient could not immediately execute a retainer before taking action on behalf of a client. The Committee also decided to delete the specific information that needed to be included in a retainer agreement, recognizing that such requirements could be inconsistent with requirements governing retainer agreements in state rules of professional responsibility.

Section 1611.9(c)

This provision was revised in response to a concern that, if the retainer was required to be included in the client's file and was subject to examination by LSC during monitoring, it might give LSC an opportunity to review the whole file, which could violate the restrictions on LSC access to client information, even though the current rule suggests that client identity is protected. As with eligibility information, this section requires that disclosure of information be consistent with the attorney-client privilege and the applicable rules of professional responsibility. The Committee recognized that in most instances, the recipient could simply redact the names and other identifying information from the retainer agreement to meet the standard set out in this section. However, there might be instances where a particular retainer agreement includes more information about the actual representation than would a financial intake sheet. The retainer agreement, for example, might reveal so much information about the client or case that it would be impossible to protect client identity by redacting only client identifying information such as name and address. In such a case, all additional information that could indirectly reveal client identity would have to be redacted as well.

In cases where the identity of the client is already known, review of a retainer agreement could reveal substantial information that relates to representation. SCLAID reiterated its concern about protection of client information. Clearly, the Corporation would need to devise procedures that would balance its need to ensure that retainer agreements are being properly executed and maintained, while appropriately protecting client information. The Committee welcomes comments on such procedures.

Section 1611.9(d)

The Committee adopted additional language in its revision of this provision to expand the explanation of the circumstances under which a retainer agreement was not necessary, such as when the service was of brief duration or very limited in scope. This provision would be particularly important for programs that operate telephone hotlines, where, in many instances, the services consist of limited advice or consultation and the only contact with the client is via telephone. The issue is where to strike the balance between protecting the interests involved and limiting the administrative burdens on recipients. The Committee invites public comment on this issue.

Section 1611.9(e)

This provision was added to deal with the situation where a state or national support center has joined a case brought by a local recipient as co-counsel. This provision makes it clear that the client must have notice that another program is assisting in the representation, and the original retainer agreement must be broad enough in scope to encompass the new services that are being provided. The Committee wanted to distinguish the co-counselling situation from the case where a local field program turned the representation over to a support center or other recipient, with the original recipient no longer serving as counsel in the case. The Committee felt that a new retainer agreement should be required in that situation, but invites comments on the issue. Nothing in this provision would prevent a support center from executing a new retainer agreement with a client, even when the relationship is clearly one where the support center is only a co-counsel in the case, and there may be situations where it would be necessary or prudent for it to do so.

The Committee also wished the Commentary to make clear that this provision was not applicable to situations where a recipient does intake and financial eligibility screening for an applicant for service and then refers the applicant to another attorney who has agreed to represent the applicant on a pro bono basis, either through the recipient's PAI program or on some other basis. In that instance, the private attorney, not the recipient, is representing the client, and any retainer agreement should be made between the client and the private attorney, subject to any appropriate standards governing pro bono practice. The Committee invites additional comments on this or other situations that may arise where other attorneys are involved in the representation of eligible clients.

Section 1611.10 Change in Circumstances

The Committee proposes two revisions to the current language. The first changes the phrase ''is sufficiently likely to continue'' to ''is sufficient and is likely to continue,'' in order to clarify what is meant by the phrase. The second revision expands the language regarding professional responsibilities. The recipient may have obligations to the client beyond those of the individual attorney and ethical concerns might be broader than professional responsibilities. In addition, the Committee invites comments from the public as to whether this provision is adequate to deal with the issue of when a change in a client's circumstances would require discontinuation of representation by the recipient and what procedures a recipient should follow to effect such discontinuation.

List of Subjects in 45 CFR Part 1611

Legal services.

For reasons set forth in the preamble, LSC proposes to revise 45 CFR part 1611 to read as follows:

PART 1611—ELIGIBILITY

Sec.

1611.1 Purpose.
1611.2 Definitions.
1611.3 Eligibility policies or guidelines.
1611.4 Annual income ceilings.
1611.5 Authorized exceptions to the recipient's annual income ceiling.
1611.6 Asset ceilings.
1611.7 Group eligibility.
1611.8 Manner of determining financial eligibility.
1611.9 Retainer agreement.
1611.10 Change in circumstances.

Appendix A—Legal Services Corporation Poverty Guideline

Note: Appendix A: The Corporation is not requesting comments on the current Appendix. The Appendix is revised annually, after the Corporation receives the new Federal Poverty Guidelines. Accordingly, the Appendix will be revised for 1995 at a later date.

Authority: 42 U.S.C. 2996e(b)(1), 2996e(b)(3), 2996f(a)(1), 2996f(a)(2).

§ 1611.1 Purpose.

This part is designed to ensure that a recipient will determine eligibility for legal assistance according to financial and other criteria that take account of factors that influence an individual's or group's ability to obtain legal assistance, and to afford sufficient latitude for a recipient to consider local circumstances and its own resource limitations. This part also seeks to insure that eligibility is determined in a manner conducive to development of an effective attorney-client relationship.

§ 1611.2 Definitions.

(a) *Applicable rules of professional responsibility* means the rules of ethics and professional responsibility generally applicable to attorneys in the jurisdiction where the recipient either provides legal services or maintains its files.

(b) *Assets* means, at a minimum, cash or other liquid assets or resources that are readily convertible to cash, which are currently and actually available to the applicant and which could be used to retain private counsel.

(c) *Governmental program for low income individuals or families* means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of financial need.

(d) *Income* means actual current annual total cash receipts before taxes of all persons who are resident members of, and contribute to the support of a household or family unit.

(e) *Total cash receipts* include, but are not limited to, money, wages and salaries before any deduction; net income from self-employment; regular cash payments from public assistance and other benefit programs; and other regular or recurring sources of financial support that are currently and actually available to the applicant for service.

§ 1611.3 Eligibility policies or guidelines.

(a) The governing body of a recipient shall adopt eligibility policies or guidelines, consistent with this part, for determining the eligibility of persons and groups seeking legal assistance under the Act. The governing body shall review its eligibility policies or guidelines at least once every three years and make adjustments if necessary.

(b) In addition to consideration of income under §§ 1611.4 and 1611.5, the recipient's eligibility policies or guidelines shall provide that, before undertaking representation or providing services to an applicant, the recipient shall consider the existence of assets available to the applicant, and shall disqualify any applicant for service whose assets are in excess of the asset ceiling set by the recipient pursuant to § 1611.6, unless a waiver is granted pursuant to § 1611.6(c).

(c) The recipient's eligibility policies or guidelines may also provide for consideration of the following factors which may be used by the recipient to determine whether or not to provide services to a particular financially eligible applicant for service:

(1) The applicant's current income prospects, taking into account seasonal variations in income;

(2) The availability of private or other legal representation at low or no cost with respect to the particular matter in which assistance is sought;

(3) The consequences for the individual or group if legal assistance is denied;

(4) Other significant factors that affect an individual's financial inability to afford legal assistance, which may include evidence of a prior administrative or judicial determination that a person's present lack of income results from refusal or unwillingness, without good cause, to seek or accept suitable employment; and

(5) Any other case acceptance criteria, in addition to the recipient's priorities established under Part 1620 of these regulations, that the recipient may utilize to determine which cases to accept from among cases of financially eligible persons or groups. Such criteria shall include, but are not limited to, consideration of the merits of the applicant's claim and any conflicts of interest that may exist.

§ 1611.4 Annual income ceilings.

(a) Every recipient shall establish an annual income ceiling. Unless disqualified on the basis of assets under § 1611.3(b), applicants for services whose income falls below the recipient's annual income ceiling will be considered financially eligible to receive legal assistance supported with funds provided under the Act, subject to the recipient's consideration of the factors described in § 1611.3(c).

(b) Unless specifically authorized by the Corporation, a recipient shall not establish an annual income ceiling that exceeds a maximum of one hundred and twenty-five percent (125%) of the current official Federal Poverty Guidelines. The calculations of 125% of the current Federal Poverty Guidelines are set forth in Appendix A to this part as revised annually. The recipient's governing body shall review the recipient's annual income ceiling annually and consider any changes made in Appendix A to this part.

(c) Before establishing its annual income ceiling, a recipient shall consider cost of living in the service area. The recipient shall also consider other factors that it determines are relevant. These factors may include, but are not limited to:

(1) The number of clients who can be served by the resources of the recipient;

(2) The population who would be eligible at and below alternative income ceilings; and

(3) The availability and cost of legal services provided by the private bar in the area.

(d) Unless authorized by § 1611.5, no person whose income exceeds the annual income ceiling established by a recipient shall be eligible for legal assistance supported with funds provided under the Act, but this part does not prohibit a recipient from providing legal assistance to an applicant for service whose annual income exceeds the annual income ceiling established by the recipient, if the legal assistance provided to the person is supported in whole by funds from a source other than the Corporation.

§ 1611.5 Authorized exceptions to the recipient's annual income ceiling.

(a) Subject to the recipient's consideration of the factors described in § 1611.3(c), an applicant for service whose income exceeds the annual income ceiling established by a recipient, but does not exceed 200% of the Federal Poverty Guidelines, may be provided legal assistance supported by funds provided under the Act if the applicant would not be disqualified on the basis of assets under § 1611.3(b), above; and

(1) The applicant is seeking legal assistance to secure or maintain benefits provided by a governmental program for low income individuals or families;

(2) The applicant is seeking legal assistance to secure or maintain benefits provided by a governmental program for the disabled, but only if without those benefits the applicant's income would not exceed the recipient's annual income ceiling; or

(3) The recipient determines that the applicant should be deemed to be eligible for services on the basis of one or more of the following factors that restrict the applicant's financial ability to afford private legal assistance:

(i) The applicant's current income prospects, taking into account seasonal variations in income;

(ii) Unreimbursed medical or nursing home expenses, but if an applicant's income is primarily committed to medical or nursing home expenses, the applicant may be served if his or her income is over 200 percent of the Federal Poverty Income Guidelines but does not exceed the recipient's annual income ceiling after such expenses are deducted;

(iii) Fixed debts and obligations, including but not limited to, current Federal, state or local taxes withheld from salary or paid periodically, unpaid Federal, state or local taxes from prior years, child support or alimony payments made to a current or former spouse, custodial parent, guardian or other custodian of a dependent minor child;

(iv) Child care, transportation, and other expenses necessary for employment, job training or educational activities in preparation for employment;

(v) Unusual expenses associated with age or disability of a resident family member; or

(vi) Other significant factors that the recipient finds are related to the applicant's financial ability to afford private legal assistance.

(b) In the event that a recipient determines that it will provide legal assistance pursuant to § 1611.5(a), the recipient shall document the specific factor(s) relied on to make the determination. The recipient shall keep such records as are necessary to inform the Corporation as to the number of such cases and the specific factors relied on to make such determinations, consistent with the restrictions on disclosure contained in § 1611.8(d).

§ 1611.6 Asset ceilings.

(a) The governing body of the recipient shall establish guidelines incorporating reasonable asset ceilings to be utilized in determining eligibility for services under §§ 1611.3(b), 1611.4 and 1611.5. As part of the review required under § 1611.3(a), the recipient shall review its asset ceiling guidelines at least once every three years and adjust them as necessary.

(b) In establishing such guidelines, the recipient may consider asset exemptions which may be available under State or Federal law.

(c) The asset ceiling guidelines may provide authority for the director of the recipient or the director's designee to waive the ceilings on maximum allowable assets in unusual situations.

(d) In the event such a waiver is granted, the recipient shall document the factors considered in granting the waiver. The recipient shall keep such records as are necessary to inform the Corporation as to the number and the specific factors considered in granting such waivers, consistent with the restrictions on disclosure contained in § 1611.8(d).

§ 1611.7 Group eligibility.

(a) A recipient may provide legal assistance to a group, corporation, association or other entity if such group or entity provides information showing that it lacks, and has no practical means of obtaining, funds to enable it to obtain private counsel in the matter on which representation is sought, and that it:

(1) Is primarily composed of persons who are financially eligible for legal assistance under the Act and this part; or

(2) Has as its principal function or activity the furtherance of interests that benefit those persons in the community who would be financially eligible for legal assistance under the Act and this part, and the representation sought relates to such a function or activity.

(b) This part does not prohibit a recipient from providing legal assistance to a group or entity that does not meet the requirements of this section if the legal assistance is supported in whole by funds from a source other than the Corporation.

§ 1611.8 Manner of determining eligibility.

(a) A recipient shall adopt simple intake forms and procedures to obtain financial and other information from individuals and groups to determine eligibility in a manner that promotes the development of trust between attorney and client. The forms shall be preserved by the recipient and information contained in the forms may be disclosed only in a manner that is consistent with § 1611.8(d).

(b) If there is substantial reason to doubt the accuracy of the financial or other eligibility information provided by an individual or group client or applicant for service, a recipient shall make appropriate inquiry to verify the information, in a manner consistent with the attorney-client relationship.

(c) When one recipient has determined that a client is eligible for service in a particular case or matter, that recipient may request another recipient to extend legal assistance or undertake representation on behalf of that client in the same case or matter in reliance upon the initial eligibility determination. The subsequent recipient is not required to review or redetermine the client's eligibility unless there is a change of circumstances as described in § 1611.10 or there is substantial reason to doubt the validity of the original determination.

(d) Information furnished to a recipient by a client or an applicant for service to establish eligibility shall not be disclosed to the Corporation or to any third party who is neither employed nor retained by the recipient, nor associated with the recipient as co-counsel in the representation of the client, without the express written consent of the client or applicant except as such disclosure may be permitted without violation of the attorney-client privilege or applicable rules of professional responsibility. Nothing in this paragraph would prohibit an attorney from revealing information provided by a client that is implicitly authorized to be revealed in order to carry out the representation.

§ 1611.9 Retainer agreement.

(a) A recipient shall execute a written retainer agreement with each individual or group client or named class representative who is represented by the recipient, in a form consistent with the applicable rules of professional responsibility and prevailing practices in the recipient's service area.

(b) The retainer agreement shall be executed when representation commences or as soon thereafter as is practicable.

(c) The recipient shall retain the executed retainer agreement and shall make the agreement available for review by the Corporation in a manner that protects from disclosure any information protected by the attorney-client privilege or the applicable rules of professional responsibility.

(d) A recipient is not required to execute a written retainer agreement when only providing limited advice, consultation, or brief service.

(e) When one recipient has executed a retainer agreement with a client, another recipient acting as co-counsel may extend legal assistance or undertake representation on behalf of that client in the same case or matter at the request of the original recipient without executing a separate retainer agreement, as long as—

(1) The additional legal assistance or representation is within the scope of the original retainer agreement; and

(2) the client has received written notification that another recipient is

providing additional legal assistance or representation in the matter.

§ 1611.10 Change in circumstances.

If an eligible client becomes ineligible through a change in circumstances, a recipient shall discontinue representation if the change in circumstances is sufficient, and is likely to continue, to enable the client to afford private legal assistance, and discontinuation is not inconsistent with applicable rules of professional responsibilities.

Dated: January 10, 1995.

Victor M. Fortuno,

General Counsel.

[FR Doc. 95–1071 Filed 1–18–95; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[MD Docket No. 95–3; FCC 95–14]

Assessment and Collection of Regulatory Fees For Fiscal Year 1995

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: The Commission is proposing to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 1995. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees. For fiscal year 1995 sections 9(b) (2) and (3) provide for annual ''Mandatory Adjustments'' and ''Permitted Amendments'' to the Schedule of Regulatory Fees. The proposed revisions will further the National Performance Review goals of reinventing Government by requiring beneficiaries of Commission services to pay for such services.

DATES: Comments must be filed on or before February 13, 1995 and reply comments must be filed on or before February 28, 1995.

FOR FURTHER INFORMATION CONTACT: Peter W. Herrick, Office of Managing Director at (202) 418–0443, or Terry D. Johnson, Office of Managing Director at (202) 418–0445.

SUPPLEMENTARY INFORMATION:

In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1995; Notice of Proposed Rulemaking

[MD Docket No. 95–3]

Adopted: January 10, 1995; Released: January 12, 1995

Comment Date: February 13, 1995

Reply Date: February 28, 1995

By the Commission:

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Appendix G—Development of Common Carrier Services Regulatory Fees

I. Introduction

1. By this *Notice of Proposed Rulemaking,* the Commission begins a proceeding to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to section 9 of the Communications Act, has required it to collect for Fiscal Year 1995 (FY 1995). *See* 47 U.S.C. 159(b)(2). The current Schedule is set forth in §§ 1.1152 through 1.1155 of the Commission's rules. 47 CFR §§ 1.1152–1.1155.

2. We are proposing adjustments to the Schedule in order to recover $116,400,000 in costs, consistent with the amount that Congress has appropriated for our enforcement, policy and rulemaking and international activities and user information services for FY 1995.[1] 47 U.S.C. 159(a). In addition, we propose to amend the Schedule to assess regulatory fees from licensees of services not now included in the Schedule and to revise our method of assessing fees for certain services currently in the Schedule. 47 U.S.C. 159(b)(1)(A), (b)(3). Further, we propose to amend the format of the Schedule so that its fee categories reflect changes in the Commission's new organizational structure.[2] 47 U.S.C. 159(b)(3). Finally, we propose to adjust the threshold amounts for eligibility for installment payments and to amend our procedures governing installment payments. 47 U.S.C. 159(f)(1).

3. In many instances, the regulatory fees that we are proposing for FY 1995 are significantly higher than the fees that we assessed under the statutory fee schedule to recover our regulatory costs for FY 1994. *See* 47 U.S.C. 159(g); *see also Implementation of Section 9 of the Communications Act (FY 1994 Order),* 9 FCC Rcd 5333 (1994). These revisions result, in large part, from increases in the amounts that Congress has appropriated for Commission activities whose costs must be recovered through regulatory fees. As noted, the amount appropriated and to be recovered through regulatory fees is $116,400,000, which is 93 percent more than the $60,400,000 that the Commission was required to recover through regulatory fees in FY 1994. The impact of this increase is, however, offset to some extent by revenues from services that we propose to add to the Schedule and by increases in the number of payment units, *e.g.*, subscribers, in certain other services.[3] Appendix B sets forth our proposed Schedule of Regulatory Fees for FY 1995.

II. Background

4. Section 9(a) of the Act authorizes the Commission to assess and collect annual regulatory fees to recover the costs, as determined annually by Congress, that it incurs in carrying out enforcement, policy and rulemaking, international activities, and user information services. 47 U.S.C. 159(a). In our *FY 1994 Order,* we set forth the regulatory fee schedule for FY 1994 and prescribed rules to govern payment of the fees, as required by Congress.[4] 47 U.S.C. 159(f)(1).

5. For FY 1994, we adopted the Schedule of Regulatory Fees that Congress enacted in section 9(g) of the Act, and required regulatory fee payments from licensees and other regulatees operating in the Private Radio, Mass Media, Common Carrier and Cable Television services. We concluded that Congress did not intend for us to modify section 9(g)'s Schedule of Regulatory Fees for FY 1994, and, thus, declined to amend the statutory fee schedule in any way.[5] *See FY 1994 Order* at para. 12.

6. For fiscal years after FY 1994, however, sections 9(b) (2) and (3) provide for annual ''Mandatory Adjustments'' and ''Permitted Amendments'' to the Schedule of Regulatory Fees. In making section 9(b)(2)'s mandatory adjustments, we are first to consider the amount we are to collect as set forth in our Appropriations Act. 47 U.S.C. §§ 159(b)(2), (b)(1)(B). Second, we are to identify the number of Full Time Equivalent (FTE) employees allocated to our enforcement, policy and rulemaking, user information and international activities.[6] 47 U.S.C. § 159(b)(1)(A). 159(b)(1)(A). Third, we are to determine the amount to be recovered from each *fee category, e.g.*, Common Carrier, by proportionately increasing or decreasing the revenue requirement of each fee category relative to the ratio of FTEs in each category to the total number of FTEs allocated to our regulatory activities. 47 U.S.C. § 159(b)(2) The resulting fee category share of the total amount to be recovered is then prorated among each service within the fee category to determine the cost allocation applicable to each service. Finally, the prorated cost allocation is divided by the number of estimated payment units, *e.g.*, subscribers, for each service within the category in order to determine service fees. 47 U.S.C. § (b)(2)(A).

7. In addition, section 9(b)(3), relating to ''Permitted Amendments'' to the Schedule, provides that, if we find it necessary, we shall amend the Schedule of Regulatory Fees, as provided in section 9(b)(1)(A) to, *inter alia*, reflect the benefits of our regulation to the payors of the fees by considering their service areas, the nature of their service, and other factors that we determine are necessary in the public interest. 47 U.S.C. §§ 159(b)(3), (b)(1)(A). In making these amendments, we ''shall add, delete, or reclassify services in the Schedule to reflect additions, deletions or changes in the nature of its services.'' 47 U.S.C. § 159(B)(3). Finally, we are required to notify Congress of any permitted amendments 90 days before

[1] *See* Public Law 103–317, 108 Stat. 1724 at 1737–38 (Approved August 26, 1994).

[2] Specifically, we propose to add to the Schedule a Wireless Radio Services fee category and an International Services fee category. Concurrently, we propose to delete the Private Radio Service fee category since we have abolished the Private Radio Bureau. Also, we proposed to amend the Common Carrier Service fee category and the Mass Media Service fee category because certain services formerly subject to regulation by the Common Carrier Bureau and the Mass Media Bureau are now regulated by the Wireless Radio Bureau and the International Bureau and are, thus, properly within the scope of the Wireless Radio and International Service fee categories. Finally, we propose to add the Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) to the Mass Media Service fee category, and delete them from the Common Carrier Service fee category, since these services are now regulated by the Mass Media Bureau.

[3] Payment units represent the number by which a payor must multiply the fee amount for a particular service in order to calculate its total fee due for the service. For example, ''subscribers'' is the payment unit applicable to cable television fees. The number of subscribers is multiplied by the cable system fee amount to determine the system's total fee liability.

[4] *See* 47 CFR §§ 1.1151 through 1.1166.

[5] In the *FY 1994 Order,* we adopted rules to implement the collection of regulatory fees, including payment procedures, specific exemptions from the payment of regulatory fees, procedures for requesting waivers, reductions and deferments of fee payments, and penalties for late payment or non-payment of the fees. We shall in the near future address petitions for reconsideration of the *FY 1994 Order* and consider whether to make amendments to our implementing rules.

[6] Full Time Equivalent (FTE) employment is the total number of regular straight-time hours (*i.e.*, not including overtime or holiday hours) worked by employees divided by the number of compensable hours applicable to each fiscal year. *See* Office of Management and Budget Circular A–11, section 13.1, Definitions relating to employment.

those amendments go into effect. 47 U.S.C. § 159(b)(4)(B).

III. Discussion

A. Proposed FY 1995 Regulatory Fees

8. As noted above, Congress has required the recovery of $116,400,000 for FY 1995 through the collection of regulatory fees representing the costs applicable to our enforcement, policy and rulemaking, international activities, and our user information services. 47 U.S.C. § 159(a).

9. In adjusting our regulatory fees pursuant to section 9(b)(2)'s provisions for ''Mandatory Adjustments'', we first distributed our directly assigned FY 1995 FTE's among our various regulatory activities. We then allocated additional FTEs supporting the regulatory fee activities to the Private Radio, Mass Media, Common Carrier, and Cable Services Bureaus.[7] Appendix C contains a more detailed description of our allocation of FTEs by activity. The resulting allocation of FTEs is as follows:

	FTEs	Percentage ratio
Private Radio	103	7.3
Mass Media	253	18.0
Common Carrier	689	49.0
Cable Services	361	25.7
Total	1,406	100.00

10. Next, we allocated our $116,400,000 revenue requirement to the Private Radio, Mass Media, Common Carrier, and Cable Services activities, based on the FTE percentage ratios shown above. For example, to derive the amounts to be recovered from cable services, we calculated that the 25.7 percent of total FTEs representing the 361 FTEs assigned to the cable services activity resulted in $29,824,911 to be recovered through the collection of cable services fees.[8] The resulting allocation of costs by regulatory fee category was as follows:

Private Radio	$8.5 million.
Mass Media	20.9 million.
Common Carrier	57.0 million.
Cable Services	29.9 million.

11. After determining the cost allocation, we estimated FY 1995 payee units for the individual services within each fee category. For example, we estimated that there are approximately 57,000,000 payment units for cable systems, *i.e.*, cable subscribers. These estimates are based upon information provided by Commission program managers and supplemented by information contained in actual licensee data bases maintained by the Commission, information provided by industry groups or contained in trade publications, and actual data from FY 1994 regulatory fee collections. *See* Appendices D through G.

12. Next, in order to make the proportionate changes in the statutory schedule of fees required by section 9(b)(2), we compared our FY 1995 revenue requirement in each fee category, *e.g.*, Cable Services, with the total amount that would be collected from all of the services within each category under the FY 1994 fee schedule. For example, we estimated that approximately $21.5 million or $8.4 million less than its FY 1995 revenue requirement, would be collected from cable system payors based upon our FY 1994 fees. We pro-rated the difference in these amounts to the individual services, *e.g.*, cable systems were allocated $29.9 million to be recovered, and then divided the revenue requirement for each individual service by its estimated number of payee units to derive our ''Mandatory Adjustments'' to the fee schedule.

13. Following our calculation of the ''Mandatory Adjustments'' to the fee schedule, we reviewed each service and its associated fee payment to determine if the nature of a service or the public interest warranted a fee adjustment pursuant to section 9(b)(3)'s requirements for ''Permitted Amendments.'' Pursuant to our authority to make permitted amendments to the fees, we are proposing to revise our method for calculating fees for AM and FM radio stations, public mobile service, including cellular service providers, competitive access providers (CAPs), and small earth station antennas. Additionally, we are proposing a separate fee for satellite television stations to distinguish those stations from full service television stations and we are proposing to add a fee requirement for licensees of FM translator and booster stations. After making these proposed permitted amendments, we propose to revise the remaining fees within the affected service's category in order to take into account the impact of the fee modification upon other services within the category. Finally, we propose to combine certain services within a fee category having analogous fee amounts, such as public mobile and cellular licenses, in order to reduce the number of separate service categories and to simplify the overall schedule of fees.[9]

14. In the following paragraphs, we describe our mandatory adjustments and proposed permitted amendments to the Schedule of Regulatory Fees on a service-by-service basis. The Commission proposes to retain, for fee determination purposes, the fee classifications (i.e., Private Radio, Common Carrier, Cable Services and Mass Media) contained in 47 U.S.C. Section 159. Although we believe that we have authority to change the classifications to align them more closely with our current organizational structure, we want to minimize any adverse impacts to the schedule brought about solely by such a classification change. Although we have developed the fee amounts for FY 1995 based upon the service categories in the statutory fee schedule, in order to assist interested parties in locating particular fees, we have formatted the FY 1995 Schedule of Fees to reflect our new organizational structure. *See* Appendix B. With the exception of annual fees in the amount of $5.00 or less, individual fee amounts have been rounded to the nearest $5 in the case of fees under $1,000 or to the nearest $25 in the case of fees of $1,000 or more in accordance with section 9(b)(2). Appendices C through G describe the method in which FTEs were assigned to the major service categories and the development of the fees within each major service category.

1. Private Radio Services

15. Regulatory fees for services in the Private Radio category are located in the Wireless Radio category of the proposed fee schedule. We have developed our FY 1995 regulatory fees for Private Radio services by making mandatory adjustments to their statutory fees that take into account the quality of frequency allocated to those services.

[7] The FTEs attributed to Private Radio, Mass Media, Common Carrier, and Cable services activities are primarily performed within those Bureaus. In addition, the Compliance and Information Bureau (CIB), formerly the Field Operations Bureau, the Office of Engineering and Technology (OET) and the Office of Managing Director (OMD) perform activities supporting the Bureaus. FTEs assigned to CIB, OET and some sections of OMD supporting the regulatory activities of the Bureaus were attributed to the Bureaus' activities in developing the total FTEs allocated to the activities whose costs are to be recovered through regulatory fees.

[8] We have rounded all percentages to the nearest one-tenth of a percent.

[9] We have not proposed regulatory fees for the Personal Communications Service (PCS), Commercial Mobile Radio Service (CMRS), Low Earth Orbital (LEO) Satellite Service and the Direct Broadcasting Satellite (DBS) Service because no facilities were authorized on our proposed date for calculating fees, October 1, 1994, to operate in these services or such authorizations are so recent that negligible portion of FTEs are assigned to these services other than for application processing.

See Appendix D. As a result, we are proposing to continue to assess two levels of regulatory fees for these services, exclusive use services and shared use services, on the basis of the quality of the communications channel provided to the licensee. Our action here is consistent with section 9's directive that fees take into account the benefits provided to the payee of the fees and with the policy reflected in the statutory schedule, which provides for higher fee payments for exclusive use services within the Private Radio category of services. *See* 47 U.S.C. 159(b)(1)(A), (g). Further, it is consistent with the statutory fee schedule's formulation of fees for exclusive and shared services.

16. We are proposing no change to the rules for calculating fee payments and submitting regulatory fee payments for private radio services. *See FY 1994 Order,* Appendix B at paras. 2–12. Rather, due to the relatively small regulatory fees generally assessed for these services, we propose to continue to require applicants for new, reinstatement and renewal licenses in these services to submit the entire regulatory fee for the full term of their requested license at the time they file their license applications.[10] *See* 47 U.S.C. 159(f)(1). Applicants for modification or assignment of an existing authorization will not be required to submit a regulatory fee. However, the expiration date of these authorizations will reflect only the unexpired term of the underlying license rather than a new license term.

a. Exclusive Use

17. *Land Mobile Services,* set forth in the FY 1995 regulatory fee schedule within the wireless radio service category, include those authorized under Part 90 of the Commission's Rules to provide limited access wireless radio service that allows high quality voice or digital communications between vehicles or to fixed stations to further the business activities of the licensee. These Services, using the 220–222 MHz band and frequencies at 470 MHz and above, may be offered on a private carrier basis in the Specialized Mobile Radio Services (SMRS). Our FY 1995 cost allocation to the Land Mobile Services fee category is $462,455, resulting from the mandatory adjustment of its FY 1994 revenue requirement under the statutory fee schedule. Payment units for Land Mobile Services are estimated to be 13,213 licenses. Dividing the cost allocation to the Land Mobile Service fee category by its payment units and its license term of five years results in an annual fee of $7 per license.[11] *See* Appendix D. Thus, we are proposing that Land Mobile licensees be subject to a $7 annual regulatory fee per license, payable for an entire five or ten year license term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due would be either $35 for a license with a five year term or $70 for a license with a 10 year term. We are proposing no change to the rules for calculating and submitting regulatory fees by Land Mobile licensees. *See FY 1994 Order,* Appendix B at para. 4.

18. *Microwave Services,* set forth in the FY 1995 fee schedule within the wireless radio service category, include private microwave systems and private carrier systems authorized under Part 94 of the Commission's Rules to provide telecommunications services between fixed points on a high quality channel of communications. Microwave systems are often used to relay data and to control railroad, pipeline and utility equipment. Our FY 1995 cost allocation to Microwave Services is $225,400, resulting from the mandatory adjustment to its FY 1994 revenue requirement under the statutory fee schedule. Payment units for Microwave Services are estimated to be 6,440 licenses. Dividing the revenue requirement of Microwave Services by its payment units and license term of five years results in an annual fee of $7 per license. *See* Appendix D. Thus, we are proposing that microwave licensees be subject to a $7 annual regulatory fee per license, payable for an entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due would be $35 for the five year license term. We are proposing no change to the rules for calculating and submitting regulatory fee payments by Microwave Services. *See FY 1994 Order,* Appendix B at para. 5.

19. *Interactive Video Data Service (IVDS),* set forth in the FY 1995 fee schedule within the wireless radio service category, is a two-way point-to-multi-point radio service allocated high quality channels of communications and authorized under Part 95 of the Commission's Rules. IVDS provides information, products and services, and also the capability to obtain responses from subscribers in a specific service area. IVDS is offered on a private carrier basis. Our FY 1995 revenue requirement attributable to IVDS is $50,750, resulting from the mandatory adjustment to its FY 1994 revenue requirement under the statutory fee schedule. Payment units for IVDS are estimated at 1,450 licenses. Dividing the revenue requirement of IVDS by its payment units and license term of five years results in an annual fee of $7 per license. *See* Appendix D. We are proposing that IVDS licensees be subject to a $7 annual regulatory fee per license, payable for an entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due would be $35 for the five year term of the license. We are proposing no change to the rules for calculating and submitting regulatory fee payments for IVDS. *See FY 1994 Order,* Appendix B at para. 6.

b. Shared Use Services

20. Licensees in the following services, set forth in the FY 1995 fee schedule within the wireless radio service category, generally operate on shared frequencies.

21. *Marine (Ship) Service* is a shipboard radio service authorized under Part 80 of the Commission's Rules to provide telecommunications between watercraft or between watercraft and short-based stations. Radio installations are required by domestic and international law for large passenger or cargo vessels. Radio equipment may be voluntarily installed on smaller vessels, such as recreational boats. Our FY 1995 cost allocation to the Marine (Ship) Service fee category is $5,070,420, resulting from the mandatory adjustment to its FY 1994 revenue requirement under the statutory fee schedule. Payment units for Marine (Ship) Service are estimated to be 169,014 stations. Dividing the revenue requirement of the Marine (Ship) Service by its payment units and license term of ten years results in an annual fee of $3 per station. *See* Appendix D. Thus, we are proposing that marine (ship) station licensees be subject to a $3 annual regulatory fee per station, payable for an entire ten year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due would be $30 for the ten year license term. We are proposing no change to the rules for calculating and submitting regulatory fee payments by the Marine (Ship) Service licensees. *See FY 1994 Order,* Appendix B at para. 9.

[10] In the event that the subject application is not granted, the entire regulatory fee submitted will be returned upon request of the payor of the fee. *See* 47 C.F.R. § 1.1159(a)(2)(iii).

[11] Although this fee category includes licenses with ten year terms, the estimated volume of ten year license applications in FY 1995 is less than one tenth of one percent and, therefore, is statistically insignificant.

22. *Marine (Coast) Service*, set forth in the FY 1995 fee schedule within the wireless radio service category, includes land-based stations in the maritime services, authorized under Part 80 of our rules, to provide communications services to ships and other watercraft in coastal and inland waterways. Our FY 1995 cost allocation to the Marine (Coast) Services is $41,955, resulting from the mandatory adjustment of its FY 1994 revenue requirement under the statutory fee schedule. Payment units for the Marine (Coast) Service are estimated to be 2,797 licenses. Dividing the revenue requirement of the marine (Coast) Service by its payment units and license term of five years results in an annual fee of $3 per license. *See* Appendix D. Thus, we are proposing that these licensees by subject to a $3 annual regulatory fee per call sign, payable for the entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee done would be $15 per call sign for the five year license term. We are proposing no change to the rules for calculating and submitting regulatory fee payments by the Marine (Coast) Service *See FY 1994 Order*, Appendix B at para. 9.

23. *Private Land Mobile (Other) Services*, set forth in the FY 1995 fee schedule within the wireless radio service category, includes land mobile radio services operating under Parts 90 and 95 of the Commission's Rules. Services in this category provide one or two way communications between vehicles, persons or to fixed stations on a shared basis and include radio location services, private carrier paging services, industrial radio services and land transportation radio services. Our FY 1995 cost allocation for Private Land Mobile (Other) Services is $1,396,275, resulting from the mandatory adjustment to its FY 1994 revenue requirement under the statutory fee schedule. Payment units for Private Land Mobile (Other) Services are estimated to be 93,085 licenses. Dividing the revenue requirement of the Services by their payment units and license term of five years results in an annual fee of $3 per license. *See* Appendix D. Therefore, we are proposing that licensees of services in this category be subject to a $3 annual regulatory fee per call sign, payable for an entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due would be $15 for the five year license term. We are proposing no change to the rules for calculating and submitting regulatory fee payments by Private Land Mobile Service licensees. *See FY 1994 Order*, Appendix B at para. 11.

24. *Aviation (Aircraft) Service*, set forth in the FY 1995 fee schedule within the wireless radio service category, includes stations authorized to provide communications between aircraft and from aircraft to ground stations and includes frequencies used to communicate with air traffic control facilities pursuant to part 87 of our rules. Our FY 1995 revenue requirement attributable to the Aviation (Aircraft) Service is $1,130,430, resulting from the mandatory adjustment to its FY 1994 revenue requirement under the statutory fee schedule. Payment units for the Aviation (Aircraft) Service are estimated to be 37,681 stations. During the revenue requirement of the Aviation (Aircraft) Service by its payment units and license term of ten years results in an annual fee of $3 per station. *See* Appendix D. Thus, we are proposing that licensees of aircraft stations be subject to a $3 annual regulatory fee per station, payable for the entire ten year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due would be $30 per station for the ten year license term. We are proposing no change to the rules for calculating and submitting regulatory fee payments by Aviation (Aircraft) Service licensees. *See FY 1994 Order*, Appendix B at para. 8.

25. *Aviation (Ground) Service*, set forth in the FY 1995 fee schedule within the wireless radio service category, includes stations authorized to provide ground-based communications to aircraft for weather or landing information, or for logistical support pursuant to Part 87 of the rules. Our FY 1995 revenue requirement attributable to the Aviation (Ground) Service is $39,900, resulting from the mandatory fee adjustment to its revenue requirement under the statutory fee schedule. Payment units for the Aviation (Ground) Service are estimated to be 2,660 licenses. Dividing the Service's revenue requirement by its payment units and licenses term five years results in an annual fee of $3 per license. *See* Appendix D. Thus, we are proposing that these licensees of aviation ground stations be subject to a $3 annual regulatory fee per license, payable for the entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee would be $15 per call sign for the five year license term. We are proposing no change to the rules for calculating and submitting regulatory fee payments by Aviation (Ground) Service licensees. *See FY 1994 Order*, Appendix B at para. 8.

26. *General Mobile Radio Service (GMRS)*, set forth in the FY 1995 fee schedule within the wireless radio service category, includes land mobile radio licensees providing personal and limited business communications between vehicles or to fixed stations for short-range, two-way communications pursuant to Part 95 of our rules. Our FY 1995 cost allocation for GMRS is $41,775, resulting from the mandatory adjustment to its FY 1994 revenue requirement. Payment units for GMRS are estimated to be 2,785 licenses. Dividing GMRS' revenue requirement by its payment units and license term of five years results in an annual fee of $3 per license. *See* Appendix D. Thus, we are proposing that (GMRS) licensees be subject to a $3 annual regulatory fee per license, payable for an entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due would be $15 per license for the five year license term. We are proposing no change to the rules for calculation and submission of regulatory fee by GMRS licensees. *See FY 1994 Order*, Appendix B at para. 10.

c. Amateur Radio Vanity Call-Signs

27. *Amateur Vanity Call-Signs*, set forth in the FY 1995 fee schedule within the wireless radio service category, covers voluntary requests for specific call-signs in the Amateur Radio Service. We have not yet concluded our rulemaking proceeding concerning authorizing vanity call-signs. See *Notice of Proposed Rulemaking*, 9 FCC Rcd 105 (1993), 59 FR 558 (January 5, 1994). Nevertheless, we are including a fee for vanity call signs since we expect to conclude this proceeding during FY 1995. Our FY 1995 cost allocation to Amateur Vanity Call-Signs is $60,000, resulting from the mandatory adjustment to its FY 1994 revenue requirement under the statutory fee schedule. *See* Appendix D. Payment units for Amateur Vanity Call-Signs are estimated to be 2,000 licenses. Dividing this service category's cost allocation by its estimated payment units and license term of ten years results in a fee of $3 per year per license. Thus, we are proposing that applicants for amateur vanity call-signs be subject to a $3 annual regulatory fee per call-sign, payable for an entire ten year license term at the time of application for a vanity call sign. The total regulatory fee due would be $30 per license for the ten

year license term.[12] We are proposing no change to the rules for calculating and submitting regulatory fees for amateur vanity call-sign licensees. *See FY 1994 Order,* Appendix B at para 12.

2. Mass Media

28. The regulatory fees for the Mass Media fee category apply to broadcast licensees and permittees.

a. Commercial AM and FM Radio

29. These categories include licensed commercial AM (Classes A, B, C, and D) and FM (Classes A, B, B1, C, C1, C2, and C3) radio stations operating under Part 73 of the Commission's rules. In developing our FY 1995 individual fee amounts for AM and FM stations, we determined that the public interest required that we retain the operational class distinctions among AM and FM stations that Congress established in its statutory fee schedule. Also, as a permissive amendment and consistent with petitions for rulemaking filed by Teddy Bear Communications, Inc. and La Paz Broadcasting, Inc., we included a further distinction in order to recognize that the population density of a station's geographic location was also a public interest factor warranting recognition in the fee schedule. After due consideration, we decided that stations located in Arbitron radio markets vis-a-vis those not located in these markets provided a logical distinction for allocating a fee ratio burden.[13] We quantified this distinction by adopting a fee ratio between the Arbitron and non-Arbitron markets similar to the ratio of the fee requirement the statutory fee scheduled established for the larger television station markets and the schedule's ''remaining markets.'' [14] Thus, for AM and FM stations we exercised our authority to make permitted amendments to the fee schedule in order to lower the fees for stations with relatively small coverage areas and daytime only operations and for stations operating in rural areas. The following are our proposed regulatory fees for AM and FM stations.

AM Radio:	
Class A (Arbitron Market)	$1,525
Class A (Non-Arbitron Market)	565
Class B (Arbitron Market)	850
Class B (Non-Arbitron Market)	315
Class C (Arbitron Market)	340
Class C (Non-Arbitron Market)	125
Class D (Arbitron Market)	425
Class D (Non-Arbitron Market)	155
FM Radio:	
Classes C, C1, C2, B (Arbitron Market)	$1,525
Classes C, C1, C2, B (Non-Arbitron Market)	565
Classes A, B1, C3 (Arbitron Market)	1,025
Classes A, B1, C3 (Non-Arbitron Market)	375

We are proposing no change to the rules for calculating and submitting regulatory fees by AM and FM radio station licensees. *See FY 1994 Report,* Appendix B at paras. 14–17 and 19.

b. Construction Permits—Commercial AM Radio

30. This category includes holders of permits to construct new AM stations. The FY 1995 cost allocation for commercial AM construction permit fee category is $9,480, resulting from the mandatory adjustment to its FY 1994 revenue requirement under the statutory fee schedule. Payment units for the category are estimated to be 79 AM construction permits. Dividing the revenue requirement for AM construction permits by estimated payment units results in a regulatory fee of $120 per construction permit. *See* Appendix E. Thus, for FY 1995, we are proposing to assess permittees $120 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable and licensees would be required to pay the applicable fee for the designated class/market of the station. We are proposing no change in the rules for calculating and submitting the regulatory fee by AM construction permittees. *See FY 1994 Order,* Appendix B at para. 18.

c. Construction Permits—Commercial FM Radio

31. This category includes holders of permits to construct new commercial FM stations. The FY 1995 cost allocation for commerical FM radio construction permits is $418,285, resulting from the mandatory adjustment to the category's FY 1994 revenue requirement under the statutory fee schedule. Payment units are estimated to be 703 FM construction permits. Dividing the revenue requirements for FM construction permits by estimated payments units results in a regulatory fee $595 per permit. *See* Appendix E. Thus, for FY 1995, we are proposing to assess permittees $595 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a regulatory fee based upon the designated class/market of the station. We are proposing no change in the rules for calculating and submitting regulatory fees by FM construction permittees. *See FY 1994 Order,* Appendix B at para. 20.

d. Commercial Television Stations

32. This category includes licensed commercial VHF and UHF television stations covered under Part 73 of the Commissions rules, except commonly owned television satellite stations, addressed separately below. We are proposing to assess commercial television stations annual fees based on the station's market rankings as published by Warren Publishing in the 1994 Edition of the Television and Cable Factbook (No. 62). The FY 1995 revenue requirements for the different categories of VHF and UHF commercial television stations are shown in Appendix E, including both an amount resulting from the services mandatory adjustment and an additional amount required to offset the reduced fee for satellite television stations, described below, pursuant to our authority to make permitted amendments to the fees. Payment units for each service category with the commercial television fee category are shown in Appendix E. Dividing the revenue requirements for each commercial television station category by the corresponding estimate of payment units results in the following proposed fees to be assessed on stations in each ADI market grouping:

VHF Markets 1–10	$21,450
VHF Markets 11–25	19,075
VHF Markets 26–50	14,300
VHF Markets 51–100	9,525
VHF Remaining Markets	5,950
UHF Markets 1–10	17,150
UHF Markets 11–25	15,250
UHF Markets 26–50	11,450
UHF Markets 51–100	7,625
UHF Remaining Markets	4,775

See Appendix E. We are proposing no change to the rules for calculating and submitting regulatory fee payments by television stations licensees. *See FY 1994 Order,* Appendix B at para. 21–24.

[12] Section 9(h) exempts ''amateur radio operator licenses under part 97 of the Commission's regulations (47 C.F.R. Part 97)'' from the requirement. However, section 9(g)'s fee schedule explicitly includes ''Amateur vanity call signs'' as a category subject to the payment of a regulatory fee.

[13] Arbitron has identified 261 Metro Survey Areas (MSAs) that range in population from 14,033,500 (Market 1) to 47,100 persons (Market 261). Stations operating outside Arbitron's MSAs are considered to be located in ''non-arbitron markets'' serving more rural geographic areas. *See* Arbitron rankings, *Broadcasting & Cable Yearbook,* compiled annually by R. R. Bowker, a Reed Reference Publishing Company. For the formulation of FY 1995 AM and FM fees, we have used the 1994 edition of the Yearbook since it provides the most recently published market data.

[14] *See* Appendix for a more detailed explanation of the development of our fees for AM and FM radio stations.

e. Commercial Television Satellite Stations

33. Pursuant to our authority to make permissive amendments to our regulatory fees, we are also proposing that commonly owned television satellite stations in any market (authorized pursuant to Note 5 of Section 73.3555 of the Commission's Rules) that retransmit programming of the primary station be assessed a fee of $595 annually, based upon the $500 fee for FY 1994 passed by the House of Representatives for satellite stations. While not legally binding, the $500 base fee was determined to be appropriate for licensees of television satellite stations in our FY 1994 authorization bill passed in the House of Representatives. See H.R. 4522. In addition, we believe that this fee amount takes into account the public interest factors reflected in comments filed in the proceeding to adopt the FY 1994 Schedule of Regulatory Fees. *See* 447 U.S.C. § 159(b)(3). In developing the FY 1995 fee for television satellite stations, we used the $500 fee that the House enacted for FY 1994 for television satellite stations to derive a FY 1995 fee requirement of $595 per television satellite station resulting from a ''simulated'' FY 1994 revenue requirement divided by the estimated payments units of 101 satellite television station licenses. Therefore, we propose to exercise our authority to make permitted amendments to the fees to establish the satellite television fee at $595 per license. We expect that this fee will result in approximately $60,095 of revenues. *See* Appendix E. We caution that only those stations designated as satellite television stations in the 1994 edition of the Television and Cable Factbook (No. 62) are eligible to submit the fee applicable to satellite television stations. All other television licensees are subject to the regulatory fee payment required for their class of station and market.[15]

f. Construction Permits—Commercial VHF Television Stations

34. This category includes holders of permits to construct new commercial VHF television stations. For FY 1995, the cost allocation for this service category is $52,525, resulting from the fee category's FY 1994 revenue requirement under the statutory fee schedule. Payment units for VHF construction permits are estimated to be 11 permits. Dividing the revenue requirement for VHF construction permits by its estimated payment units results in a fee of $4,775. *See* Appendix E. Therefore, for FY 1995, we are proposing to assess permittees $4,775 for each VHF construction permit held. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station. We are proposing no change to the rules for calculating and submitting regulatory fees by VHF television station construction permittees. *See FY 1994 Order,* Appendix B at para. 24.

g. Construction Permits—Commercial UHF Television Stations

35. This category includes holders of permits to construct new UHF television stations. For FY 1995, the cost allocation for this service category is $554,625, resulting from the mandatory increase to its statutory fee schedule. Payment units for UHF construction permits are estimated to be 145 permits. Dividing the revenue requirement for this service category by its estimated payment units results in a fee of $3,825 for each UHF construction permit held. Therefore, we are proposing a fee of $3,825 per UHF television station construction permit. *See* Appendix E. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station. We are proposing no change to the rules for calculating and submitting regulatory fees by UHF television station permittees. *See FY 1994 Order,* Appendix B at para. 25.

h. Construction Permits—Satellite Television Stations

36. We are proposing to add a new service category to the fee schedule in recognition that the holders of construction permits for UHF and VHF television satellite stations should be charged a separate, lower fee than the fee for holders of construction permits for fully operational television stations. *See* above, where we propose to exercise our authority to make permitted amendments to the fee schedule relating to the fee for television satellite stations. We developed the fee for television satellite construction permits by taking the average fees for VHF and UHF television stations ($12,655) and relating it to the average fee for construction permits for VHF and UHF television stations ($4,300). Using this relationship, (.339:1) for satellite stations results in a computed fee of $200 for construction permits for television satellite stations ($595 times .339). *See* Appendix E. An individual regulatory fee payment is to be made for each television satellite station construction permit held.

i. Low Power Television, Translator and Booster Stations

37. This category includes Low Power UHF/VHF Television stations operating under Part 74 of the Commissions rules with a transmitter power output limited to 0.01kw for a UHF facility and, generally, 1kw for a VHF facility. Low Power Television (LPTV) stations may retransmit the programs and signals of a TV broadcast station, originate programming, and/or operate as a subscription service. This category also includes translators and boosters operating under Part 74 which rebroadcast the signals of full service stations on a frequency different from the parent station (translators) or on the same frequency (boosters). We propose to exercise our authority to make permitted amendments to the fee schedule to include FM translator and booster stations in this fee service because we believe these facilities were inadvertently omitted from the statutory fee schedule and we are unaware of any reason not to establish a fee for these services. The stations in this category are secondary to full service stations in terms of frequency priority. The FY 1995 cost allocation for this service category is $1,368,640, resulting from the mandatory adjustment to its FY 1994 revenue requirement under the statutory fee schedule. Payment units are estimated to be 8,554 licenses, including licenses covering FM translators. Dividing the revenue requirement for this category by its estimated payment units results in a fee of $160 per license. *See* Appendix E. Thus, for FY 1995, we are proposing to assess licensees of low power television stations and licensees of both FM and TV translators and boosters an annual regulatory fee of $160 for each license held. We are proposing no change to the rules for calculating and submitting regulatory fee payments by licensees in this service category. *See FY 1994 Order,* Appendix B at paras. 26–27.

j. Broadcast Auxiliary Stations

38. This category includes licensees of remote pickup stations, aural broadcast auxiliary stations, television broadcast auxiliary stations, and low power auxiliary stations, authorized under Part 74 of the Commission's Rules. Auxiliary stations are generally associated with a

[15] We acknowledge that the Commission has initiated an NPRM seeking comment on whether satellite stations should continue to be exempt from the Commission's national television ownership restrictions. Be advised that the Commission's decision to assess a regulatory fee for satellite stations that is less than the amount for commercial television stations should not be taken as a signal that any determination has been made with regard to this outstanding proceeding.

particular television or radio broadcast station or cable television system. The FY 1995 cost allocation for this category is $1,500,000, resulting from the mandatory adjustment to its FY 1994 revenue requirement under the statutory fee schedule. Payment units are estimated to be 50,000 licenses. Dividing the category's revenue requirement by its estimated payment units results in a fee of $30 per license. *See* Appendix E. Thus, we are proposing that licensees of commercial auxiliary stations be assessed a $30 annual regulatory fee for FY 1995 on a per call sign basis. We are proposing no change to the rules for calculating or submitting regulatory fee payments by licensees of facilities in this service category. *See* FY 1994 Report, Appendix B at para. 28.

k. International HF Broadcast (Short Wave)

39. This category covers international broadcast stations licensed under Part 73 to operate on a frequency in the 5,950 Khz to 26,100 Khz range to provide service to the general public in foreign countries. The proposed fees for International HF Broadcast are set forth in the International Service category in the FY 1995 fee schedule. For FY 1995, the cost allocation for the category is $4,560, resulting from the mandatory adjustment to its FY 1994 revenue requirement under the statutory fee schedule. Payment units are estimated to be 19 licenses. Dividing the category's revenue requirements by its estimated payment units results in a fee of $240 per license. *See* Appendix E. Thus, for FY 1995, we are proposing to assess an annual regulatory fee of $240 per station license. We are proposing no change to the rules for calculating and submitting fees by licensees of facilities in this service category. *See FY 1994 Order,* Appendix B at para. 29.

3. Cable Services

a. Cable Television Systems

40. This category includes operators of cable television systems, as the term is defined in Section 76.5 of our rules, providing or distributing programming or other services to subscribers under Part 76 of our Rules. For FY 1995, the cost allocation for cable television systems is $29,070,000, resulting from the mandatory adjustment to the category's FY 1994 revenue requirement under the statutory fee schedule. Estimated payment units are 57,000,000 subscribers. Dividing the categories cost allocation by its estimated payment units results in a fee of $.51 per subscriber. *See* Appendix F. Therefore, we are proposing a fee of $.51 per cable television subscriber.[16]

41. Payments for cable systems are to be made on a per subscriber by community unit basis as of December 31, 1994 as reported on each cable system's 1994 Annual report of Cable Systems (FCC Form 325). As in FY 1994, cable systems should determine their subscriber numbers by calculating the number of single family dwellings, the number of individual households in multiple dwelling units, *e.g.*, apartments, condominiums mobile home parks, etc., paying at the basic subscriber rate, the number of bulk rate customers and the number of courtesy or fee customers. In order to determine the number of bulk rate subscribers, a system should divide its bulk rate charge by the annual subscription rate for individuals households. We are proposing no change in the rules for calculating or submitting regulatory fees by cable system operators. *See FY 1994 Order,* Appendix B at para. 31.

b. Cable Antenna Relay Service

42. This category includes cable television relay service (CARS) stations used to transmit television and related audio signals, signals of AM and FM broadcast stations and cablecasting from the point of reception to a terminal point from where the signals are distributed to the public by a cable television system. For FY 1995, the cost allocation for CARS is $635,010, resulting from the mandatory adjustment to its FY 1994 revenue requirement based upon the statutory fee schedule. Payment units are estimated to be 2,082 licenses. Dividing the revenue requirement for CARS by its estimated payment units results in a fee of $305 per license. *See* Appendix F. Thus, for FY 1995, we are proposing to assess a $305 regulatory fee per CARS license. We are proposing no change to the rules for calculating and submitting regulatory fees by CARS licensees.

4. Common Carrier Services

a. Mobile Services

43. *Public Mobile/Cellular Radio Services*, set forth in the FY 1995 fee schedule within the wireless radio service category, include common carriers and others (e.g., cellular radio licensees) offering, under Parts 22 and 24, a wide variety of land-based or air-to-ground mobile telephone, paging or data transmission services to the public. Licensees include those using radio to provide telephone services at fixed locations, such as Basic Exchange Telecommunications Radio Services, Rural Radio and Offshore Radio. For FY 1994, we required a fee payment on a subscriber basis pursuant to the statutory requirement to charge a per subscriber fee. *See* 47 U.S.C. § 159(g).

44. We recognize that the statutory language permitted a licensee to submit a single per subscriber fee for an entity subscribing to its service no matter how many actual units of communication services that subscriber obtained from the licensee. Nevertheless, we believe that a more equitable payment formulation would require each licensee to submit a fee based upon the total number of telephone numbers or call signs that it provides to customers so that its fee payment would better reflect the benefit that the licensee receives from its use of frequencies of communications. Therefore, for FY 1995, we propose to exercise our authority to make permitted amendments to the fee schedule to propose that each licensee in the Public Mobile/Cellular Radio Services pay an annual regulatory fee for each mobile or cellular unit (mobile or cellular call sign or telephone number), including paging units, assigned to its customers, including resellers of its services. For FY 1995, the service category's cost allocation is $4,420,000, resulting from the mandatory adjustment to its FY 1994 revenue requirement under the statutory fee schedule. Payment units under our proposed formulation are estimated to be 34,000,000 subscribers. Dividing the category's cost allocation by its estimated subscribers results in a regulatory fee of $.13 per payment unit. *See* Appendix G. Thus, we are proposing a fee of $.13 per subscriber. With the exception of extending the regulatory fee to all units provided by licensees in this service category, we are proposing no change to the rules for payment of fees by licensees in the Public Mobile/Cellular Radio Services. *See FY 1994 Order,* Appendix B at para. 31.[17]

b. Fixed Radio Services

45. *Domestic Public Fixed Radio Service* includes stations authorized under Part 21 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. This category includes licensees

[16] Consistent with our earlier interpretation of Congressional intent, we propose to require payment of the cable system regulatory fees on a per subscriber basis rather than per 1,000 subscribers as set forth in the statutory fee schedule. *See FY 1994 Order* at para. 100.

[17] As noted above, we are proposing no regulatory fee for Personal Communications Services (PCS) and Commercial Mobile Radio Services (CMRS) for FY 1995 because no facilities were authorized for PCS and CMRS by our proposed date for calculating fees, October 1, 1994.

in the Point-to-Point Microwave Radio Service, Local Television Transmission Radio Service, Digital Electronic Message Service, Multipoint Distribution Service (MDS), and Multichannel Multipoint Distribution Service (MMDS).[18] For FY 1995, the cost allocation for the Domestic Public Fixed Radio Services is $158,000, resulting from the mandatory adjustment to its FY 1994 revenue requirement under the statutory fee schedule. Payment units are estimated to be 1,320 licenses. Dividing the Service's cost allocation by its estimated payment units results in a fee of $120 per call sign. *See* Appendix G. Therefore, we are proposing that Domestic Public Fixed Radio Service licensees be subject to a $120 annual regulatory fee per call sign, payable on a specified date to be announced by the Commission. We are proposing no change to the rules for calculation and submission of the fee payment by licensees in the Domestic Public Fixed Radio Services. *See FY 1994 Order,* Appendix B at para. 37.

46. *International Public Fixed Radio Service,* set forth in the FY 1995 fee schedule within the International fee category, includes common carriers authorized under Part 23 of the Commission's Rules to provide radio communications between the United States and a foreign point via microwave or HF troposcatter systems, other than satellites and satellite earth stations, but not including service between the United States and Mexico and the United States and Canada using frequencies above 72 MHz. The cost allocation for the International Public Fixed Radio Service is $4,800, resulting from the mandatory adjustment to its revenue requirement under the statutory fee schedule. Payment units for the Service are estimated to be 20 call signs. Dividing the Service's revenue requirement by its estimated payment units results in a fee of $240 per call sign. *See* Appendix F. thus, we are proposing that international public fixed radio service licensees be subject to a $240 annual regulatory fee per call sign, payable on a specified date to be announced by the Commission. We are proposing no change to the rules for calculating and submitting fees by licensees in the International Public Fixed Radio Services. *See FY 1994 Order,* Appendix B at para. 38.

[18] MDS and MMDS are now regulated by the Mass Media Bureau and, therefore, the regulatory fees for these services are shown within the Mass Media category in the FY 1995 fee schedule. *See* Appendix B.

c. VSATs and Equivalent C-Band Antennas/Mobile Satellite Earth Stations

47. *VSATs and Equivalent C-Band Antennas* includes VSAT earth stations and equivalent C-Band earth stations and antennas and earth station systems comprised of very small aperture terminals operating in the 12 and 14 GHz bands and providing a variety of communications services to other stations in the network. VSAT systems consist of a network of technically-identical small fixed-satellite earth stations which often include a larger hub station. VSAT earth stations and C-Band equivalent earth stations are authorized pursuant to Part 25 of the Commission's Rules. *Mobile Satellite Earth Stations,* operating pursuant to Part 25 of the rules under blanket licenses for mobile antennas (transceivers), are smaller than one meter and provide voice or data communications, including position location information for mobile platforms such as cars, buses or trucks. The 1995 cost allocation for this category is $56,810, resulting from the category's mandatory adjustment under the FY 1994 statutory fee schedule. Payment units are estimated to be 437,000 antennas. *See* Appendix G. Dividing the revenue requirement by estimated payments units results in a regulatory fee for FY 1995 of $.13 per authorized antenna. Therefore, we propose to assess licensees of VSATs an annual regulatory fee of $.13 per authorized antenna for FY 1995. The proposed fee for this service is set forth in the International category in the FY 1995 fee schedule. *See* Appendix B. We are not proposing to change the rules for calculation and payment of the fee for VSATs, VSAT equivalents and mobile earth station antennas.

d. Fixed Satellite Earth Station Antennas

48. *Transmit/Receive and Transmit Only Earth Stations.* This category includes fixed-satellite transmit/receive and transmit only earth sation antennas, authorized or registered under Part 25 of the Commission's rules, operated by private and public carriers to provide telephone, television, data, and other forms of communications. The proposed fees for this fee category are set forth in the FY 1995 fee schedule in the International Service category. Included in this category are telemetry, tracking, and control (TT&C) earth stations and earth station uplinks.

49. In our *FY 1994 Order,* we adopted this statutory fee schedule's requirement that assessed a higher fee for fixed satellite earth stations antennas of 9 meters or more than for those less than 9 meters. This distinction resulted in the anomaly that antennas performing the same function were subjected to different fees, one several thousand percent higher than the other. To rectify this disparity, we propose to exercise our permitted authority to eliminate the differing fee levels for these earth stations. We are proposing that any earth station in this service category be charged a fee based upon size as measured in meters. This modification will eliminate the disparity in fees under the former schedule, but assure that smaller antennas will continue to be subject to a smaller fee requirement than larger antennas.

50. The FY 1995 cost allocation for transmit and transmit/receive earth stations is $3,533,500, resulting from the mandatory adjustment under the FY 1994 revenue requirement for this fee category. Payment units are estimated to be 19,100 antenna meters. Dividing the cost allocation for this category by its estimate payment units results in a fee of $185 per meter. *See* Appendix G. Therefore, we are proposing a regulatory fee of $185 per meter for transmit/receive and transmit only earth stations. In determining the number of meters of an earth station, all measurements should be made to the tenth of a meter.

51. *Receive Only Earth Stations.* For the reasons discussed above, we propose to eliminate the disparity in the fee requirement for receive only antennas above and below 9 meters. Thus receive only earth stations will be assessed a per meter fee, regardless of whether they are above or below 9 meters in size. The FY 1995 cost allocation for receive only earth stations is $4,116,000, resulting from the mandatory adjustment to the fee category's revenue requirement under the statutory fee schedule. Payment units are estimated to be 34,300 antenna meters. Dividing the cost allocation for the category by its estimated payment units results in a fee of $120 per meter. *See* Appendix G. Thus, we are proposing a regulatory fee of $120 per meter for receive only earth stations. All measurements will be to the tenth of a meter.

e. Space Stations (Geosynchronous)

52. Geosynchronous space stations, set forth in the FY 1995 fee schedule within the International Service category, are domestic and international satellites positioned in orbit to remain approximately fixed relative to the earth. They are authorized under Part 25 of the Commission's rules to provide communications between satellites and

earth stations on a common carrier and/or private carrier basis. The FY 1995 cost allocation for geosynchronous space stations is $4,978,750, resulting from the mandatory increase in the category's FY 1994 revenue requirement under the statutory fee schedule. Payment units estimated to be 35 operational space stations in orbit. Dividing the revenue requirement for this category by its estimated payment units results in a fee of $142,250 per operational space station in orbit. *See* Appendix G. Thus, we are proposing that entities authorized to operate geosynchronous space stations in accordance with section 25.120(d) will be assessed an annual regulatory fee of $142,250 per operational station in orbit. Payment is required for any geosynchronous satellite that has been launched and tested and is authorized to provide service. We are proposing no change to the rules for calculating and submitting regulatory fee payments by licensees of geosynchronous space stations. *See FY 1994 Order,* Appendix B at para. 35.

f. International Bearer Circuits

53. Regulatory fees for international bearer circuits are computed ''per 100 active 64 Kbps circuits or equivalent.'' International bearer circuits are set forth in the International Service category in the FY 1995 fee schedule. The proposed fee is to be paid by the facilities-based common carrier activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. However, we propose to modify our requirements for payment of the fee for bearer circuits by private submarine cable operators to require that they pay fees for circuits sold on an indefeasible right of use (IRU) basis or leased to any customer other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. *Compare FY 1994 Order* at 5367. The fee is based upon active 64 Kbps circuits, or equivalent circuits. Under this formulation, 64 Kbps circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 Kbps circuit equivalent of larger bit stream circuits. For example, the 64 Kbps circuit equivalent of a 2.048 Mbps circuit is 30 64 Kbps circuits. Analog circuits such as 3 and 4 KHz circuits used for international service are also included as 64 Kbps circuits. However, circuits derived from 64 Kbps circuits by the use of digital circuit multiplication systems are not equivalent 64 Kbps circuits. Such circuits are not subject to fees. Only the 64 Kbps circuit from which they have been derived will be subject to payment of a fee. The FY 1995 cost allocation is $310,000 based on an estimated volume of 62,000 active 64 Kbps circuits or equivalent. For FY 1995, we are proposing an annual regulatory fee of $5.00 for each active 64 Kbps circuit or equivalent. For analog television channels we will assess fees as follows:

Analog television channel size in MHz	No. of equivalent 64 Kbps circuits
36	630
24	288
18	240

See Appendix G. for a description of the development of the fees for international bearer circuits. *See FY 1994 Order,* Appendix B at para. 45.

g. Inter-exchange and Local Exchange Carriers, Competitive Access Providers, Pay Telephone Providers, and Other Non-mobile Providers of Interstate Service

54. In the *FY 1994 Order,* we adopted the fees and calculation methodology for Inter-Exchange Carriers (IXC's), Local Exchange Carriers (LECs) and Competitive Providers (CAPs) contained in the section 9(g)'s fees schedule. We rejected proposals to modify the fees schedule because Congress intended us to adopt that schedule in its entirety for FY 1994. Under the statutory schedule, CAPs are assessed fees based upon their number of subscribers. As a consequence, some CAPs filed very small fee payments because they serve only a few subscribers even though these subscribers are large entities with heavy communications requirements.

55. Several of the commenters in the FY 1994 proceeding urged that we extend the fee requirement to other providers of interstate communications services, including resellers, in addition to those subject to a fee requirement under the statutory fee schedule. We declined to do so. However, we stated that we would review the fee schedule to determine if other carriers should be subject to the regulatory fee requirement for FY 1995.

56. We now believe that resellers and other carriers providing interstate services subject to our jurisdiction and directly benefiting from our regulation of the interstate network should be subject to a regulatory fee payment. In particular, we are cognizant that our decisions requiring facilities based carriers to eliminate any restrictions on the resale and sharing of their interstate private line communications services and facilities and our continuing market surveillance has fostered the growth of a strong communications resale industry. In opening up the interstate network to resellers, we asserted our jurisdiction over their activities pursuant to Title II of the Communications Act.[19] We believe that carriers subject to our regulation should bear the costs of that regulation. For these reasons, we are proposing, as described below, to subject any carrier, whether facilities based or reseller, using the interstate network to a regulatory fee payment.

57. We propose to expand the schedule of fees for carriers to include not only IXCs, LECs and CAPs, but also domestic and international carriers that provide operator services, WATS, 800, 900, telex, telegraph, video, other switched, interstate access, special access, and alternative access services either by using their own facilities or by reselling facilities and services of other carriers or telephone carrier holding companies, and companies other than traditional local telephone companies that provide interstate access services to long distance carriers and other customers.[20]

58. The FY 1995 cost allocation for this category is $39,000,000, resulting from the mandatory adjustment of the Commission's FY 1994 revenue requirement under the statutory fee schedule. *See* Appendix G. Because our proposal and a proposed alternative method of calculating fees for the carrier category, represent a significant modification of the method in which regulatory fees are calculated, interested parties are requested to file comments concerning the most efficient and equitable method for assessment of regulatory fees.

59. We propose to calculate carrier fees based on the number of customer units, *i.e.,* the number of users of a service, provided by a carrier as of December 31, 1994. For access service

[19] *See Resale and Shared Use of Common Carrier Services,* 60 FCC 2d 588, 600 (1977) (In addition to allowing resellers to obtain lines from facilities based carriers, we declared that ''' [resale carriers],' whether they be brokers or value added carriers * * * , are equally subject to the requirements of Title II of the Communications Act.''); *see also American Tel & Tel. Co.* v. *F.C.C.,* 978 F.2d 727, 735 (D.C. 1992) (finding that resellers and other nondominant carriers must file tariffs and offer their services pursuant to just, reasonable and nondiscriminatory rates and practices pursuant to sections 201 and 202 of the Act.) Resellers currently are subject to filing fees pursuant to section 8 of the Act.

[20] A holding company may combine fee payments of its operating companies and pay their combined fees for a particular service in a single combined payment or by installments, if the aggregate of their fees in a single service qualifies the holding company to make installment payments.

provided by local exchange carriers, the number of customer units would equal the number of presubscribed lines as described in Section 69.116 of the Commission's Rules. For pay telephone service, the number of customer units would equal the number of pay telephones used as the basis for pay telephone compensation. For MTS provided by pre-selected interexchange carriers, the number of customer units would equal the number of presubscribed lines as described in Section 69.116 of the Commission's Rules. For pay telephone service, the number of customer units would equal the number of pay telephones used as the basis for pay telephone compensation. For MTS provided by pre-selected interexchange carriers, the number of customer units would equal the number of presubscribed lines as described in Section 69.116 of the Commissions Rules. For other switched services, such as MTS, WATS, 800, 900 and operator service not billed to the number from which the call is placed, the number of customer units would equal the number of billing accounts less those accounts already associated with presubscribed lines reported by the carrier. For non-switched services, including service provided by CAPs, special access, and private (alternative access) line providers, the number of customer units would be based on the total capacity provided to customers measured as voice equivalent lines. For this purpose, 4 Khz or 64 Kbps equivalents would equate to one voice equivalent line. Dividing the $39,000,000 cost allocation by an estimated 300,000,000 customer units[21] results in a fee of $.13 per customer unit.

60. In addition, as an alternative to the fee structure described above, we are proposing to base our carrier fees on the number of minutes of interstate service in calendar year 1994. For access service provided by local exchange carriers, the number of interstate minutes would equal the number of originating and terminating access minutes. For interstate service upon which access charges are paid, the number of minutes would equal the number of originating and terminating access minutes. For other interstate services billed based on timed usage, the number of minutes would equal the number of billed minutes. For interstate services not billed on the basis of timed usage, minutes would be estimated as the billed revenue in dollars times 10. This represents a cross-over assumption that customers would substitute ordinary MTS for any service which cost more than ten cents per minute. Hence, revenue in dollars time 10 represents a lower bound number of minutes. Dividing the $39,000,000 cost allocation by 508 billion minutes[22] results in a fee of $.08 per 1000 minutes.

D. Procedures for Payment of Regulatory Fees

61. Generally, we propose to retain the procedures that we established in our *FY 94 Report and Order* for the payment of regulatory fees. Section 9(f) requires that we permit ''payment by installments in the case of fees in large amounts, and in the case of small amounts, shall require the payment of the fee in advance for a number of years not to exceed the term of the license held by the payor.'' *See* 47 U.S.C. § 1559(f). Consistent with the section, we are again proposing three categories of fee payments, based upon the category of service for which the fee payment is due and the amount of the fee to be paid. The fee categories are (1) ''standard'' fees, (2) ''large'' fees, and (3) ''small'' fees.

1. Annual Payments of Standard Fees'

62. Standard fees are those regulatory fees that are payable in full on an annual basis. Payers of standard fees are not required to make advance payments for their full license term and are not eligible for installment payments. All standard fees are payable in full on the date we establish for payment of fees in their regulatory fee category. The payment dates for each regulatory fee category will be announced either in the *Report and Order* in this proceeding or by public notice in the Federal Register following the termination of the proceeding.

2. Installment Payments for Large Fees

63. In our *FY 1994 Order,* we classified fees for several services at certain payment amounts and above as ''large'' fees, eligible to be paid by installment payments, and afforded eligible payers the opportunity to submit fees for these services in two equally divided payments.[23] We indicated, however, that based on our experience with the fee program, we would consider increasing eligibility to make installments payments. After gaining some experience, we are proposing to now lower eligibility or installment payments. Our decision to lower the eligibility threshold results from a determination that our payment processing system feasibly can handle a reasonable increase in the number of regulatees who pay in installments. Therefore, we propose to set the eligibility requirement at the lowest installment payment level permitted in FY 1994, $12,000, and propose that regulatees in any category of service with a payment liability of $12,000 or more be eligible to make installment payments. Eligibility for payment by installment will be based upon the amount of either a single regulatory fee payment or a combination of fee payments by the same licensee or regulatee.

64. In our *FY 1994 Order,* we permitted payment of ''large'' fees in two installments and stated that for future years we would permit four installment payments by eligible regulatees. The limited time that will be available following completion of this proceeding and the required 90 day notification period to Congress of our amendments to the Schedule of Regulatory Fees following completion of this proceeding makes the use of four installment payments impractical for installment payers and unduly burdens our fee collection process. Therefore, we propose that regulatees eligible to pay by installment payments may submit their required fee in two equal payments (on dates to be announced in the *Report and Order* terminating this proceeding or in the Federal Register following the proceeding's termination), or, in the alternative, may submit a single full payment on the date that their final installment payment is due.

3. Advance Payments of Small Fees

65. We are proposing to treat regulatory fee payments by certain radio licensees as small fees subject to advance payments. Advance payments will be required from licensees of those services that we decided would be subject to advance payments in our *FY 1994 Order.*[24] Payers of advance fees

[21] Local exchange carriers and toll carriers will each report a total of 142 million presubscribed lines. Allowing for ½ million privately owned pay telephone lines, 4 million special access lines, and approximately 5% resale and competitive access provision, it appears that carriers would report approximately 300 million customer units.

[22] There will be approximately 393 billion common carrier line access minutes in 1994 based on minutes reported for the first half of the year times 2. Adding 5% for resale results in 413 billion minutes. Based on 1992 published TRS Fund data, carriers provided nine and one half billion dollars of nonswitched interstate service, which adds 95 million minutes to the total.

[23] See *FY 1994 Order* at paragraphs 39 through 45.

[24] Applicants for new, renewal and reinstatement licenses in the following services will be required to pay their regulatory fees in advance: Land Mobile Services, Microwave services, Interactive Video Data Services (IVDS), Marine (Ship) Service, Marine

Continued

will submit the entire fee due for the full term of their licenses when filing their initial, reinstatement or renewal application. Those subject to the fee payment pay the amount due for the current fiscal year multiplied by the number of years in the term of their requested license. In the event that the required fee is adjusted following their payment of the fee, the payor would not be subject to the payment of a new fee until filing an application for renewal or reinstatement of the license. Thus, payment for the full license term would be made based upon the regulatory fee applicable at the time the application is filed. Refunds will not be made in cases where the fee for a service is lower for FY 1995 than the fee paid under the FY 1994 fee schedule. The Commission will announce by public notice in the Federal Register the effective date for the payment of small fees pursuant to the FY 1995 fee schedule.

4. Timing of Standard Fee Calculations and Payment Dates

66. As noted, the date for payment of standard fees and installment payments will be published in the Federal Register. For licensees, permittees and holders of other authorizations in the Common Carrier, Mass Media, and Cable Services, whose fees are not based on a subscriber, line or circuit count, fees should be submitted for any authorization held as of October 1, 1994. As in our *FY 1994 Order,* we are proposing October 1 as the date to be used for calculating standard fees since it is the first day of the fiscal year and, therefore, current licensees subject to the fees would have benefited from our regulatory activities from the beginning of the period covered by the payment.

67. In the case of regulatees whose fees are based upon a subscriber, line or circuit count, we propose that the number of a regulatees' subscribers, licenses or circuits on December 31, 1994, will be used to calculate the fee payment. We have selected the last date of the calendar year because many of these entities file reports with us as of that date. Others calculate their subscriber numbers as of that date for internal purposes. Therefore, calculation of the regulatory fee as of that date will facilitate both an entity's computation of its fee payment and our verification that the correct fee payment has been submitted.[25]

IV. Procedural Matters

A. Comment Period and Procedures

68. Pursuant to the procedures set forth in sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before February 13, 1995 and reply comments on or before February 28, 1995. All relevant comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments and supporting materials. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Interested parties, who do not wish to formally participate in this proceeding, may file informal comments to the same address. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20054.

B. Ex Parte Rules

69. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules. *See* 47 C.F.R. §§ 1.1202, 1.1203 and 1026(a).

C. Initial Regulatory Flexibility Analysis

70. As required by section 603 of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1165, 5 U.S.C. § 601 *et seq.* (1981), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix A. Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the *Notice,* but they must have a separate and distinct heading, designating the comments as responses to the IRFA. The secretary shall send a copy of this *Notice,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act.

D. Authority and Further Information

71. Authority for this proceeding is contained in sections 4(i) and (j, 9, and 303(r) of the Communications Act of 1934 as amended, 47 U.S.C. §§ 154(1) and (j) and 159 and 303(r).

72. Further information about this proceeding may be obtained by contacting Peter W. Herrick, Acting Associate Managing Director, Program Analysis at (202) 418–0443.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Appendix A—Initial Regulatory Flexibility Analysis

Reason for Action

This rulemaking proceeding is initiated to obtain comment regarding the Commission's proposed amendment of its Schedule of Regulatory Fees in order to revise its regulatory fees to collect $116,400,000, the amount that Congress has required the Commission to recover through regulatory fees in Fiscal Year 1995.

Objectives

The Commission seeks to collect the necessary amount through its proposed revised regulatory fees, as contained in the attached Schedule of Regulatory Fees, in the most efficient manner possible and without undue burden to the public.

Legal Basis

The proposed action is authorized under sections (4) (i) and (j), 9 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 (i) and (j), 159, and 303(r).

Reporting, Recordkeeping and Other Compliance Requirements

The Commission has developed FCC Form 159 and FCC Form 159C for submission with regulatory fee payments. Also, the Commission has adopted implementation rules governing the payment of regulatory fees. *See* 47 C.R.R. 1.1151 *et seq.*

Federal Rules That Overlap, Duplicate or Conflict With Proposed Rule

None.

Description, Potential Impact, and Number of Small Entities Involved

The proposed amendment of the Schedule of Regulatory Fees will affect permittees, licensees and other regulatees in the cable, common carrier, mass media, private radio and international services. After evaluating the comments in this proceeding, the Commission will further examine the impact of any fee revisions or additions or rule

(Coast) Service, Private Land Mobile (Other) Services, Aviation (Aircraft) Service, Aviation (Ground) Service, General Mobile Radio Service (GMRS). In addition, applicants for amateur radio vanity call signs will be required to submit an advance payment.

[25] Cable systems should calculate their FY 1995 regulatory fees using the subscriber data to be submitted to the Commission in their 1994 Annual Report of Cable Television Systems (FCC Form 325). Accordingly, their number of subscribers will not necessarily be based on December 31, 1994, but rather on ''a typical day in the last full week'' of December 1994. (*See* FCC Form 325 Instructions.)

changes on small entities and set forth our findings in the Final Regulatory Flexibility Analysis.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

The Notice solicits comments on alternative methods of assessing the regulatory fees necessary to recover the $116,400,000 in costs that Congress has required us to recover through regulatory fees in FY 1995.

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Appendix B

SCHEDULE OF REGULATORY FEES

Fee Category	Annual Regulatory Fee
WIRELESS RADIO	
Land Mobile (per license) (220-222 Mhz, above 470 Mhz, Base Station and SMRS) (47 CFR Part 90)	7
Microwave (per license) (47 CFR Part 94)	7
Interactive Video Data Service (per license) (47 CFR Part 95)	7
Marine (Ship) (per station) (47 CFR Part 80	3
Marine (Coast) (per license) (47 CFR Part 87)	3
General Mobile Radio Service (per license) (47 CFR Part 95)	3
Land Mobile (per license) (all stations not covered above)	3
Aviation (Aircraft) (per station) (47 CFR Part 87)	3
Aviation (Ground) (per license) (47 CFR Part 87)	3
Amateur Vanity Call Signs	3
Cellular/Public Mobile Radio (per subscriber) (47 CFR Part 22)	.13
MASS MEDIA	
AM Radio (47 CFR Part 73)	
Class A (Arbitron Market)	1,525
Class A (Non-Arbitron Market)	565
Class B (Arbitron Market)	850

Fee Category Mass Media (continued)	Annual Regulatory Fee
Class B (Non-Arbitron Market)	315
Class C (Arbitron Market)	340
Class C (Non-Arbitron Market)	125
Class D (Arbitron Market)	425
Class D (Non-Arbitron Market)	155
Construction Permits	120
FM Radio (47 CFR Part 73)	
Classes C, C1, C2, B (Arbitron Market)	1,525
Classes C, C1, C2, B (Non-Arbitron Market)	565
Classes A, B1, C3 (Arbitron Market)	1,025
Classes A, B1, C3 (Non-Arbitron Market)	375
Construction Permits	595
TV (47 CFR Part 73) VHF Commercial	
Markets 1-10	21,450
Markets 11-25	19,075
Markets 26-50	14,300
Markets 51-100	9,525
Remaining Markets	5,950
Construction Permits	4,775
TV (47 CFR Part 73) UHF Commercial	
Markets 1-10	17,150
Markets 11-25	15,250
Markets 26-50	11,450
Markets 51-100	7,625
Remaining Markets	4,775
Construction Permits	3,825
Terrestrial Satellite Television Stations (All Markets)	595

Fee Category Mass Media (continued)	Annual Regulatory Fee
Construction Permits - Terrestrial Satellite Television Stations	200
Low Power TV, TV/FM Translators & Boosters (47 CFR Part 74)	160
Broadcast Auxiliary (47 CFR Part 74)	30
Multipoint Distribution Service (per call sign) (47 CFR Part 21)	120
CABLE TELEVISION	
Cable Antenna Relay Service (47 CFR Part 78)	305
Cable Television Systems (per subscriber) (47 CFR Part 76)	.51
COMMON CARRIER	
Inter-Exchange Carrier (per customer unit)	.13
Local Exchange Carrier (per customer unit)	.13
Competitive Access Provider (per customer unit)	.13
Operator Service Provider/Pay Telephone Operators (per customer unit)	.13
Resellers (per customer unit)	.13
Other Interstate Providers (per customer unit)	.13
Domestic Public Fixed (per call sign) (CFR Part 21)	120
INTERNATIONAL	
Earth Stations (47 CFR Part 25)	
VSAT/Equivalent C-Band antennas/Mobile Satellite Earth Stations (per antenna)	.13
Earth Station Antennas - Transmit/Receive and Transmit Only (per meter)	185
Earth Station Antennas - Receive Only (per meter)	120
Space Station (per operational station in geosynchronous orbit) (47 CFR Part 25)	142,250
International Circuits (per active 64KB circuit	5
International Public Fixed (per call sign) (CFR Part 23)	240
International (HF) Broadcast (CFR Part 73)	240

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Appendix C—How Full Time Equivalents (FTEs) Were Calculated

(1) FTE allocations represent how the Commission anticipates FTEs will actually be spent during the course of the fiscal year.[26] Many factors influence how FTEs are actually employed during the year, including varying rates of attrition, speed of hiring new and replacement staff, the use of part time or temporary employees in lieu of permanent staff, changing Commission priorities, and reorganizations and other activities requiring a reallocation or reassignment of staff. The FTE allocations used in the fee development process have been updated to reflect a number of personnel reassignments made incident to recent reorganizations within the Commission. The impact on the fee development process is negligible since the reorganizations, although resulting in a reassignment of staff and functions, have not significantly changed the type of work the reassigned staff is performing.[27]

(2) Only the Commission's enforcement, policy and rulemaking, international, and user information activities are covered by the regulatory fee program.[28] Of the Commission's total of 2,271 FTEs, 846 FTEs are directly assigned to the agency's primary operating bureaus to perform enforcement, policy and rulemaking, international, and user information activities. An additional 560 FTEs have been identified by the agency as supporting these feeable activities.[29] The results of our FTE allocations are as follows:

Fee category	FTEs
Mass Media	253
Common Carrier	689
Private Radio	103
Cable Services	361
Total	1406

(3) The total of the costs to be offset by regulatory fees in FY 1995 is $116,400,000. Each fee category was allocated its share of costs based upon the ratio of its FTEs to the total number of FTEs allocated to all regulatory fee categories. The results of this allocation of costs are shown below:

Fee category	FTEs	Percent	Cost allocation (in millions)
Mass Media	253	18.0	$20.9
Common Carrier	689	49.0	57.0
Private Radio	103	7.3	8.5
Cable Services	361	25.7	29.9
Total	1406	100.0	[30]116.4

[30] May not add due to rounding.

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[26] It should be noted that FTE allocations are year-end estimates and thus represent projected work time of on-board staff as well as new and replacement staff yet to be hired.

[27] The Commission has chosen to retain, for fee determination purposes, the fee classifications (i.e., Private Radio, Common Carrier, Cable Services and Mass Media) contained in 47 U.S.C. Section 159. Although we believe that we have authority to change the classifications to align them more closely with our current organizational structure, we wanted to minimize any adverse impacts to the schedule brought about solely by such a classification change.

[28] The regulatory fee program encompasses a total of 1,406 FTEs. The agency's Authorization of Service, Legal Services and Executive Direction Activities cover an additional 865 FTEs. Authorization of Service regulatory costs are recovered pursuant to Section 8 of the Communications Act.

[29] These support activities include a proportionate share of field operations, engineering and technology and certain general program support staff FTEs.

Appendix D

DEVELOPMENT OF PRIVATE RADIO SERVICES REGULATORY FEES

Activity Cost Allocation: The Private Radio Activity was allocated 7.3% (103 FTEs) of the total 1,406 FTEs associated with all regulatory fee activities. The same percentage (7.3%) was applied to total regulatory fee activity costs ($116.4 million times 7.3% = $8.5 million).

Revision of Payee Unit Volumes: Payee volume estimates (units of payment) were updated for FY 1995. See Table #1 below.

Projected Revenue Using FY 1994 Fee Amounts & Revised FY 1995 Payee Units: Projected revenue for FY 1995 for Private Radio Activities using FY 1994 fee amounts was calculated by multiplying the updated payee volume in each fee category times the FY 1994 fee amounts. The resulting total revenue in these categories totaled approximately $19.8 million.

Pro-Rata Application of FY 1995 Revenue Requirement: Because projected revenues using FY 1994 fee amounts would have resulted in excess collections of $11.3 million ($19.8 million minus $8.5 million), proposed Private Radio fees for FY 1995 needed to be multiplied by 43% ($8.5 million divided by $19.8 million = 43%) so that revenue would better approximate the $8.5 million cost allocation for this Activity. Table #1 below shows cost allocations that were computed for each fee category within the Private Radio Activity:

Calculation of Fee: We then divided each of the above cost allocations by the applicable license term and then divided that result by the FY 1995 projected payee volume to determine the new fee requirement for each fee category within the Private Radio Activity:

Category	Cost Allocation	Divided By License Term (Yrs)	Divided By Payee Volume	Equals New Fee[31]
Land Mobile (220-222 MHz, 470 MHz and above, unless otherwise noted)	$462,455	5	13,213	7
Microwave	225,400	5	6,440	7
IVDS	50,750	5	1,450	7
Marine (Ship)	5,070,420	10	169,014	3
GMRS	41,775	5	2,785	3
Land Mobile (Other)	1,396,275	5	93,085	3
Aviation (Aircraft)	1,130,430	10	37,681	3
Marine (Coast)	41,955	5	2,797	3
Aviation (Ground)	39,900	5	2,660	3
Amateur Vanity Call Signs	60,000	10	2,000	3
Total	$8,527,169			

Table #1

[31] Rounded (applies to all tables).

Appendix E

DEVELOPMENT OF MASS MEDIA SERVICES REGULATORY FEES

Activity Cost Allocation: The Mass Media Activity was allocated 18.0% (253 FTEs) of the total 1,406 FTEs associated with all regulatory fee activities. The same percentage (18.0%) was applied to total regulatory fee activity costs ($116.4 million times 18.0% = $20.9 million).

Revision of Payee Unit Volumes: Payee volume estimates (units of payment) were updated for FY 1995. See Table #2 below.

Projected Revenue Using FY 1994 Fee Amounts & Revised FY 1995 Payee Units: Projected revenue for FY 1995 for Mass Media Activities using FY 1994 fee amounts was calculated by multiplying the updated payee volume in each fee category times the FY 1994 fee amounts. The resulting total revenue in these categories totaled approximately $17.6 million.

Pro-Rata Application of FY 1995 Revenue Requirement: Because projected revenues using FY 1994 fee amounts would have resulted in collections $3.3 million less than required ($20.9 million minus $17.6 million), proposed Mass Media fees for FY 1995 needed to be adjusted upward by 119.2% ($20.9 million divided by $17.6 million = 119.2%) so that revenue would better approximate the $20.9 million cost allocation for this Activity. Table #2 below shows cost allocations that were computed for each fee category within the Mass Media Activity.

Calculation of Fee: We then divided each of the above cost allocations by the FY 1995 projected payee volume to determine the new fee requirement for each fee category within the Mass Media Activity.

Revision to AM/FM Radio Fees: In the legislated FY 1994 fee schedule, AM & FM radio stations are distinguished by operational class (Class A, B, etc.). In order to provide a greater degree of progressivity for AM/FM fees, we added a simple market structure that further distinguishes small stations from large stations of the same operational class. In effect, we created two fees for each class or group of stations by distinguishing the fees to be paid by stations located in Arbitron ranked markets and those in remaining non-Arbitron markets. To calculate the new fees we first totalled the revenues required to be collected for each fee category contained in the FY 1994 schedule:

AM (Class A)	$82,775	FM(Class C,C1,C2,B)	$2,779,950
AM (Class B)	1,026,600	FM (Class A,B1,C3)	1,996,800
AM (Class C)	247,920	Total	$4,875,550
AM (Class D)	636,000		
Total	$1,993,295		

We determined that the most logical distinction between these kinds of stations is whether or not they are located in Arbitron ranked markets. Next, we quantified this market-based distinction by adopting a differentiation in fees similar to that between "remaining market" fees and larger market fees for television stations. We computed this relationship as follows:

(Markets 1-10 fee)+(Markets 11-25 fee)+(Markets 26-50 fee)+(Markets 51-100 fee) divided by 4 = Average Market fee. (Average Market fee) divided by (Remaining Markets fee) = Ratio

The resulting ratio for both VHF and UHF television stations is 2.7, meaning that stations in higher ranked markets, on average, pay 2.7 times what stations in remaining markets pay. For example, the computation for VHF television stations is:

($18,000 + $16,000 + $12,000 + $8,000)/4 = $13,500 ($13,500)/($5,000) = 2.7

We recognize that other ratios would also provide some degree of differentiation between large and small stations, but chose the 2.7:1 ratio in the belief that it best provides a meaningful separation between the two types of stations and keeps the calculation of individual fees relatively simple.

We also believe it would best serve the public interest to retain the relative relationships between each AM and FM fee classification contained in the legislated fee schedule utilized in FY 1994. For example, in FY 1994 a Class B AM station fee of $500 was exactly twice that of a Class D AM station ($250). We therefore retained the same relative values between the station classes for those fees associated with remaining markets.[32] As noted above, the fees for ranked markets were established at an amount equaling 2.7 times that of stations in remaining markets within each station class.

Since our overall methodology for calculating FY 1995 fees identified the costs which have to be recovered in each major fee category, including the AM and FM radio categories, we next performed a series of simple mathematical calculations to determine each of the individual AM and FM fees. The results of our computations

[32] The relationship between fees assessed to the various classes of station follow the same relationship as the 1994 fees. For example, AM Class A stations were assessed $900 which was 4.5 times the $200 fee for AM Class C stations. The FM Class C, C1, C2 & B fee of $900 was 1.5 times the $600 fee for FM Class A, B1 & C3) stations.

are as follows:[33]

AM Class A/Arbitron Markets	$1,525
AM Class A/Non-Arbitron Markets	565
AM Class B/Arbitron Markets	$ 850
AM Class B/Non-Arbitron Markets	315
AM Class C/Arbitron Markets	$ 340
AM Class C/Non-Arbitron Markets	125
AM Class D/Arbitron Markets	$ 425
AM Class D/Non-Arbitron Markets	155
FM Classes (C, C1, C2 and B)/Arbitron Markets	$1,525
FM Classes (C, C1, C2 and B)/Non-Arbitron Markets	565
FM Classes (A, B1 and C3)/Arbitron Markets	$1,025
FM Classes (A, B1 and C3)/Non-Arbitron Markets	375

Category	Cost Allocation	Divided By Payee Volume	Equals New Fee[34]
AM Radio (Class A)	$82,775	77	1,075
AM Radio (Class B)	1,026,600	1,711	600
AM Radio (Class C)	247,920	1,033	240
AM Radio (Class D)	636,000	2,120	300
AM Radio (Construction Permit)	9,480	79	120

[33] Individual fee amounts were computed by applying the ratios cited in Footnote #1 to the number of stations in each service category, and determining the base (lowest) fee given the amount of revenue allocated to the Mass Media services to be collected. Once we determined the base fee we then used the ratio between fees for different classes of service to determine the fees for each class. For example, we computed the FM fees as follows:

The 1994 fee for Class C, C1, C2 & B stations is $900 and is 1.5 times the $600 fee for Class A, B1, & C3 stations. This ratio was then applied to the non-Arbitron markets. Thus, the fees for the C, C1, C2 and B stations in non-Arbitron markets is also 1.5 times the fees for Class A, B1 and C3 stations in non-Arbitron markets. We then determined that there is a 2.7 to 1 ratio between the fee for television stations in the top 100 markets and in the remaining markets for FY 1994. We applied this 2.7 ratio to the fees for FM stations in Arbitron ranked markets and the fees for the same classes of stations in non-Arbitron markets. Thus, if the algebraic expression of x is the value of non-Arbitron market A, B1 and C3 stations, 2.7x is the value of Arbitron market A,B1 and C3 stations, and 2.7 (1.5x) or 4.05x is the value of Arbitron ranked C, C1, C2 and B stations. The estimated payee volume for C, C1, C2 and B stations is 2,481, of which 1,629 are located in Arbitron ranked markets and 852 are located in non-Arbitron markets. Likewise, the estimated payee volume for A, B1 and C3 stations is 2,586 of which 934 are located in Arbitron markets and 1,652 are located in non-Arbitron markets.

Algebraically, the fees are computed as follows:

$$1{,}652x + (2.7x)\ (934) + (1.5x)(852) + (4.05x)(1{,}629) = \$4{,}553{,}865$$

$$x = \$377$$

The calculated fees are rounded to the nearest $25 if over $1,000 and the nearest $5 if under $1,000. Thus, the FM fees are:

Class A, B1, C3 in non-Arbitron markets = $375
Class A, B1, C3 in Arbitron ranked markets = $1,025
Class C, C1, C2 and B in non-Arbitron markets = $565
Class C, C1, C2 and B in Arbitron ranked markets = $1,525

[34] Represents fee amounts resulting from application of mandatory adjustments. The cost allocations for AM and FM fee categories were subsequently totaled and used to calculate more progressive AM and FM fees incorporating a market structure basis. These calculations are shown in Footnote #2.

Category	Cost Allocation	Divided By Payee Volume	Equals New Fee
FM Radio (Classes C,C1,C2,B)	2,779,950	2,481	1,120
FM Radio (Classes A,B1,C3)	1,773,915	2,586	685
FM Radio (Construction Permit)	418,285	703	595
VHF TV (Mkt 1-10)	922,237	43	21,450
VHF TV (Mkt 11-25)	1,086,667	57	19,075
VHF TV (Mkt 26-50)	1,115,264	78	14,300
VHF TV (Mkt 51-100)	962,749	101	9,525
VHF TV (Remaining Mkts)	1,000,878	168	5,950
VHF TV (Construction Permit)	52,427	11	4,775
UHF TV (Mkt 1-10)	1,475,580	86	17,150
UHF TV (Mkt 11-25)	1,113,357	73	15,250
UHF TV (Mkt 26-50)	1,040,913	91	11,450
UHF TV (Mkt 51-100)	1,037,100	136	8,325
UHF TV (Remaining Mkts)	700,614	147	5,200
UHF TV (Construction Permit)	552,866	145	4,150
Auxiliaries	1,489,401	50,000	30
LPTV/Translators/ Boosters	1,375,956	8,554	160
Int'l Short Wave	4,528	19	240
TV Satellite (Any Mkt)[35]	60,172	101	595
TV Satellite (Construction Permit)[36]			200
Multipoint Distribution Service[37]			120
Total	$20,960,285		

Table #2

[35] The FY 1994 legislated fee schedule did not distinguish between full service television stations and satellite television stations. Although final legislation has not yet been passed by the Congress to assess satellite stations a reduced fee, the House of Representatives did pass legislation establishing a $500 fee for satellite stations in FY 1994. While not legally binding, we used the $500 House passed fee as a "simulated" FY 1994 fee in order to calculate a FY 1995 fee for satellite stations.

[36] Unlike other fees proposed for FY 1995, the TV satellite station construction permit fee of $220 was determined by taking the average fee for UHF & VHF television stations ($12,655) and relating it to the average UHF/VHF construction permit fee ($4,300). Using the same relationship (.340 to 1) for satellite television stations results in a computed fee of $200 (rounded) for satellite television station construction permits ($595 times .340).

[37] The fee for single-channel and multi-channel Multipoint Distribution Service (MDS & MMDS) was developed as part of the Domestic Public Fixed Radio Service, a common carrier service. Regulation of the MDS and MMDS services was subsequently transferred to the Mass Media Bureau.

Appendix F

DEVELOPMENT OF CABLE SERVICES REGULATORY FEES

Activity Cost Allocation: The Cable Services Activity was allocated 25.7% (361 FTEs) of the total 1,406 FTEs associated with all regulatory fee activities. The same percentage (25.7%) was applied to total regulatory fee activity costs ($116.4 million times 25.7% = $29.9 million).

Revision of Payee Unit Volumes: Payee volume estimates (units of payment) were updated for FY 1995. See Table #3 below.

Projected Revenue Using FY 1994 Fee Amounts & Revised FY 1995 Payee Units: Projected revenue for FY 1995 for Cable Services Activities using FY 1994 fee amounts was calculated by multiplying the updated payee volume in each fee category times the FY 1994 fee amounts. The resulting total revenue in these categories totaled approximately $21.5 million.

Pro-Rata Application of FY 1995 Revenue Requirement: Because projected revenues using FY 1994 fee amounts would have resulted in collections $8.4 million less than required ($21.5 million minus $29.9 million), proposed Cable Services fees for FY 1995 needed to be adjusted upward by 139% ($29.9 million divided by $21.5 million = 139%) so that revenue would better approximate the $29.9 million cost allocation for this Activity. Table #3 below shows cost allocations that were computed for each fee category within the Cable Services Activity.

Calculation of Fee: We then divided each of the above cost allocations by the FY 1995 projected payee volume to determine the new fee requirement for each fee category within the Cable Services Activity.

Category	Cost Allocation	Divided By Payee Volume	Equals New Fee
CARS	$635,288	2,082	305
Cable Television Systems	29,251,199	57,000,000	.51
Total	$29,824,911		

Table #3

Appendix G

DEVELOPMENT OF COMMON CARRIER SERVICES REGULATORY FEES

Activity Cost Allocation: The Common Carrier Activity was allocated 49.0% (689 FTEs) of the total 1,406 FTEs associated with all regulatory fee activities. The same percentage (49.0%) was applied to total regulatory fee activity costs ($116.4 million times 49.0% = $57.0 million).

Revision of Payee Unit Volumes: Payee volume estimates (units of payment) were updated for FY 1995. See Table #2 below.

Projected Revenue Using FY 1994 Fee Amounts & Revised FY 1995 Payee Units: Projected revenue for FY 1995 for Common Carrier Activities using FY 1994 fee amounts was calculated by multiplying the updated payee volume in each fee category times the FY 1994 fee amounts. The resulting total revenue in these categories totaled approximately $26.1 million.

Pro-Rata Application of FY 1995 Revenue Requirement: Because projected revenues using FY 1994 fee amounts would have resulted in collections $30.9 million less than required ($57.0 million minus $26.1 million), proposed Common Carrier fees for FY 1995 needed to be adjusted upward by 218.9% ($26.1 million divided by $30.9 million = 218.9%) so that revenue would better approximate the $57.0 million cost allocation for this Activity. Table #4 below shows cost allocations that were computed for each fee category within the Common Carrier Activity.

Calculation of Fee: We then divided each of the above cost allocations by the FY 1995 projected payee volume to determine the new fee requirement for each fee category within the Common Carrier Activity:

Category	Cost Allocation	Divided By Payee Volume	Equals New Fee
Domestic Public Fixed Radio	$158,894	1,320	120
Cellular/Public Mobile Radio	4,464,803	34,000,000	.13
International Public Fixed Radio	4,815	20	240
VSATs/Mobile Earth Stations	57,386	437,000	.13
Earth station Antennas (Tr & T/R)	3,553,239	19,100	185
Earth Station Antennas (Receive)	4,128,849	34,300	120
Space Stations	4,979,131	35	142,250
IXC,LEC,CAPS,Other Providers	39,395,321	300,000,000	.13
International Circuits	298,529	62,000	5
Total	$57,081,566		

Table #4

[FR Doc. 95–1274 FIled 1–18–95; 8:45am]
BILLING CODE 6712–01–C

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No. 95–004; Notice 1]

RIN 2127–AE94

Insurer Reporting Requirements; List of Insurers Required To File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: NHTSA proposes to update its lists in appendices A, B, and C of part 544 of passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences. If these revised appendices are adopted in a final rule, each insurer included in any of these appendices must file a report for the 1992 calendar year not later than October 25, 1995. Further, as long as they remain listed, they must submit reports by each subsequent October 25.

DATES: Comments on this proposed rule must be received by this agency not later than March 20, 1995. If this rule is made final, insurers listed in the appendices would be required to submit reports beginning with the one due October 25, 1995.

ADDRESSES: Comments on this proposed rule must refer to the docket number referenced in the heading of this notice, and be submitted to: Docket Section, NHTSA, room 5109, 400 Seventh Street, SW, Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Gray's telephone number is (202) 366–1740.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 49 U.S.C. 33112, *Insurer reports and information,* NHTSA requires certain passenger motor vehicle insurers to file an annual report. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the actions taken by the insurer to reduce or deter theft. Under the agency's implementing regulation, part 544, the following insurers are subject to the reporting requirements: (1) Those issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States; (2) Those issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one State; and (3) Rental or leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity.

Pursuant to its statutory exemption authority, the agency has exempted smaller passenger motor vehicle insurers from the reporting requirements.

A. Small Insurers of Passenger Motor Vehicles

Section 33112(f) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a State-by-State basis. The term ''small insurer'' is defined in section 33112(f) as an insurer whose premiums account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a ''small insurer,'' but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular State, the insurer must report about its operations in that State.

As described in the final rule establishing the requirement for insurer reports (52 FR 59, January 2, 1987), in 49 CFR part 544, NHTSA exercises its exemption authority by listing in appendix A each insurer which must report because it had at least 1 percent of the motor vehicle insurance premiums nationally. Listing the insurers subject to reporting instead of each insurer exempted from reporting because it had less than 1 percent of the premiums nationally is administratively simpler since the former group is much smaller than the latter. In appendix B, NHTSA lists those insurers that are required to report for particular states because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. In the January 1987 final rule, the agency stated that appendices A and B will be updated annually. It has been NHTSA's practice to update the appendices based on data voluntarily provided by insurance companies to A. M. Best, and made available to the agency each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-Insured Rental and Leasing Companies

In addition, upon making certain determinations, NHTSA is authorized to grant exemptions to self-insurers, i.e., any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) which are used primarily for rental or lease and which are not covered by theft insurance policies issued by insurers of passenger motor vehicles. 49 U.S.C. 33112(b)(1) and (f). NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and

(2) The insurer's report will not significantly contribute to carrying out the purposes of chapter 331.

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles because it believed that reports from only the largest companies would sufficiently represent the theft experience of rental and leasing companies. NHTSA concluded that reports by the many smaller rental and leasing companies do not significantly contribute to carrying out NHTSA's statutory obligations, and that exempting such companies will relieve an unnecessary burden on most companies that potentially must report. As a result of the June 1990 final rule, the agency added a new appendix C, which consists of an annually updated list of the self-insurers that are subject to part 544. Following the same approach as in the case of appendix A, NHTSA has included in appendix C each of the relatively few self-insurers which are subject to reporting instead of relatively numerous self-insurers which are exempted. NHTSA updates appendix C based primarily on information from the publications *Automotive Fleet Magazine* and *Travel Business Travel News.*

C. When a Listed Insurer Must File a Report

Under part 544, as long as an insurer is listed, it must file reports on or before each October 25. Thus, any insurer listed in the appendices as of the date of the most recent final rule must file a report by the following October 25, and by each succeeding October 25, absent

a further amendment removing the insurer's name from the appendices.

Notice of Proposed Rulemaking

1. Insurers of Passenger Motor Vehicles

Based on the 1992 calendar year A. M. Best data for market shares, NHTSA proposes to amend the list in appendix A of insurers which must report because each had at least one percent of the motor vehicle insurance premiums on a national basis. The list was last amended in a notice published on December 1, 1993 (See 58 FR 63299). One company, United States F & G Group, included in the December 1993 listing, is proposed to be removed from appendix A. Three companies, General ACC Group, Hanover Insurance Companies, and Safeco Insurance Companies, that were not listed in appendix A, are proposed to be added.

Each of the 19 insurers listed in appendix A in this notice would be required to file a report not later than October 25, 1995, setting forth the information required by part 544 for each State in which it did business in the 1992 calendar year. As long as those 19 insurers remain listed, they would be required to submit reports by each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Appendix B lists those insurers that would be required to report for particular States for calendar year 1992, because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. Based on the 1992 calendar year A.M. Best data for market shares, it is proposed that one company, Kansas Farm Bureau Group, reporting on its activities in the State of Kansas be added to appendix B.

The 12 insurers listed in appendix B of this notice would be required to report on their calendar year 1992 activities in every State in which they had a 10 percent or greater market share. These reports must be filed no later than October 25, 1995, and set forth the information required by part 544. As long as those 12 insurers remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

2. Rental and Leasing Companies

Based on information in *Automotive Fleet Magazine* and *Travel Trade Business Travel News* for 1992, the most recent year for which data are available, NHTSA proposes no changes be made in appendix C. Accordingly, each of the 18 companies (including franchisees and licensees) listed in this notice in appendix C would be required to file reports for calendar year 1992 no later than October 25, 1995, and set forth the information required by part 544. As long as those 18 companies remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

NHTSA notes that on July 5, 1994, the Cost Savings Act, (including Title VI—Theft Prevention) was revised and codified ''without substantive change.'' The passenger motor vehicle theft insurers' reporting provisions, formerly at 15 U.S.C. 2032 are now at 49 U.S.C. 33112. In this NPRM, NHTSA proposes to make minor technical amendments to make part 544 reflect its changed statutory authority.

Regulatory Impacts

1. Costs and Other Impacts

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this proposed rule and has determined the action not to be ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. This proposed rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Only those companies that are not statutorily eligible for an exemption are required to file reports.

NHTSA does not believe that this proposed rule, reflecting more current data, affects the impacts described in the final regulatory evaluation prepared for the final rule establishing part 544. (52 FR 59, January 2, 1987) Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. Using the cost estimates in the 1987 final regulatory evaluation, the agency estimates that the cost of compliance will be about $50,000 for any insurer that is added to appendix A, about $20,000 for any insurer added to appendix B, and about $5,770 for any insurer added to appendix C. If this proposed rule is made final, for appendix A, the agency would remove one insurer and add three insurers; for appendix B, the agency would add one insurer; and for appendix C, the agency would make no changes. The agency therefore estimates that the net effect of this proposal, if made final, would be a cost increase to insurers, as a group, of approximately $120,000.

Interested persons may wish to examine the 1987 final regulatory evaluation. Copies of that evaluation have been placed in Docket No. T86–01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Docket Section, Room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling at (202) 366–4949.

2. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted to and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) This collection of information has been assigned OMB Control Number 2127–0547 (''Insurer Reporting Requirements'') and has been approved for use through October 31, 1996.

3. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies proposed to be included on appendices A, B, or C would be construed to be a small entity within the definition of the RFA. ''Small insurer'' is defined in part under 49 U.S.C. 33112 as any insurer whose premiums for motor vehicle insurance account for less than one percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. This notice would exempt all insurers meeting those criteria. Any insurer too large to meet those criteria is not a small entity. In addition, in this rulemaking, the agency proposes to exempt all ''self insured rental and leasing companies'' that have fleets of fewer than 50,000 vehicles. Any self insured rental and leasing company too large to meet that criterion is not a small entity.

4. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this proposed rule and determined that it would not have a significant impact on the quality of the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies of the comments be submitted. All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. (49 CFR part 512).

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after the date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 544

Crime insurance, insurance, insurance companies, motor vehicles, reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 544 is proposed to be amended as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 would be revised to read as follows:

Authority: 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

§ 544.2 [Amended]

2. Section 544.2 *Purpose.* would be revised to read as follows:

The purpose of these reporting requirements is to aid in implementing and evaluating the provisions of 49 U.S.C. chapter 331 *Theft Prevention* to prevent or discourage the theft of motor vehicles, to prevent or discourage the sale or distribution in interstate commerce of used parts removed from stolen motor vehicles, and to help reduce the cost to consumers of comprehensive insurance coverage for motor vehicles.

§ 544.4 [Amended]

3. Paragraph (a) of § 544.4 *Definitions* would be revised to read as follows:

(a) *Statutory terms.* All terms defined in 49 U.S.C. 32101 and 33112 are used in accordance with their statutory meanings unless otherwise defined in paragraph (b) of this section.

* * * * *

§ 544.5 [Amended]

4. Paragraph (a) of § 544.5 would be revised to read as follows:

(a) Each insurer to which this part applies shall submit a report annually not later than October 25, beginning on October 25, 1986. The report shall contain the information required by § 544.6 of this part for the calendar year three years previous to the year in which the report is filed (e.g., the report due by October 25, 1995 shall contain the required information for the 1992 calendar year).

5. Appendix A to part 544 would be revised to read as follows:

Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Aetna Life & Casualty Group
Allstate Insurance Group
American Family Group
American International Group
California State Auto Association
CNA Insurance Companies
Farmers Insurance Group
Geico Corporation Group
General ACC Group*
Hanover Insurance Companies*
ITT Hartford Insurance Group
Liberty Mutual Group
Nationwide Group
Progressive Group
Prudential of America Group
Safeco Insurance Companies*
State Farm Group
Travelers Insurance Group
USAA Group

*Indicates a newly listed insurer which must file a report beginning with the report due October 25, 1995.

6. Appendix B to part 544 would be revised to read as follows:

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Amica Mutual Insurance Company (Rhode Island)
Arbella Mutual Insurance (Massachusetts)
Auto Club of Michigan Group (Michigan)
Commerce Group, Inc. (Massachusetts)
Commercial Union Insurance Companies (Maine)
Concord Group Insurance Companies (Vermont)
Erie Insurance Group (Pennsylvania)
Kansas Farm Bureau Group (Kansas)*
Kentucky Farm Bureau Group (Kentucky)
Southern Farm Bureau Casualty Group (Arkansas, Mississippi)
Tennessee Farmers Companies (Tennessee)

7. Appendix C to part 544 would be republished without charge to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
American International Rent-A-Car Corp./ANSA
Avis, Inc.
Budget Rent-A-Car Corporation
Dollar Rent-A-Car Systems, Inc.
Hertz Rent-A-Car Division (subsidiary of Hertz Corporation)
National Car Rental System, Inc.
Penske Truck Leasing Company
Ryder System, Inc. (both rental and leasing operations)
U-Haul International, Inc. (subsidiary of AMERCO)

Issued on: January 13, 1995.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 95–1345 Filed 1–18–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Chapter VI

[I.D. 011295A]

Atlantic Coast Weakfish; Intent to Prepare an EIS

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare an environmental impact statement (EIS) and request for written comments.

SUMMARY: NMFS announces its intent to prepare an EIS to assess the impact of Atlantic Coast weakfish harvests and proposed regulations on the natural and human environment. This notice of intent requests public input (written comments) on issues that NMFS should consider in preparing the EIS. Public hearings for the EIS will be scheduled at a later date. The EIS will evaluate the effects on the recovery of weakfish, as well as the effects on harvest of proposed regulations. In addition, this notice provides information on recent stock assessments for the Atlantic Coast weakfish and announces that NMFS is considering measures for the 1995 fishing year and beyond for the Atlantic Coast weakfish fishery in the exclusive economic zone (EEZ).

DATES: Written comments on the intent to prepare the EIS will be accepted until February 1, 1995. Public hearings will be announced in the Federal Register at a later date.

ADDRESSES: Comments should be sent to: Richard H. Schaefer, Director, Office of Fisheries Conservation and Management (F/CM), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: William T. Hogarth, telephone (301) 713–2347.

SUPPLEMENTARY INFORMATION:

Section 804(b) of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA) enacted in December 1993, (Public Law 103–206) states that, in the absence of an approved and implemented fishery management plan (FMP) under the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq*., and after consultation with the appropriate Fishery Management Council(s) (Council), the Secretary of Commerce (Secretary) may implement regulations to govern fishing in the EEZ that are:

1. Necessary to support the effective implementation of an Atlantic States Marine Fisheries Commission (Commission) coastal fishery management plan (CFMP); and

2. Consistent with the national standards set forth in section 301 of the Magnuson Act (16 U.S.C. 1851).

These regulations may include measures recommended by the Commission to the Secretary that are necessary to support the provisions of a CFMP. Regulations issued by the Secretary to implement an approved FMP prepared by the appropriate Council(s) or the Secretary under the Magnuson Act shall supersede any conflicting regulations issued by the Secretary under section 804(b) of ACFCMA.

The provisions of sections 307 through 311 of the Magnuson Act (16 U.S.C. 1857 through 1861) regarding prohibited acts, civil penalties, criminal offenses, civil forfeitures, and enforcement shall apply with respect to regulations issued under section 804(b) of ACFCMA as if such regulations were issued under the Magnuson Act.

Management responsibility for weakfish resides primarily with the coastal states through the Commission's CFMP for weakfish (Plan). This Plan was adopted in 1985 by the coastal states from Maine through Florida in response to severe declines in the weakfish catches and populations along the coast. Increasingly strict state regulations have been imposed by amendments to the Plan since 1985 to restrict further the harvest of weakfish by recreational and commercial fisheries and to allow rebuilding of the stocks.

However, even with these restrictions, the weakfish population is not showing signs of recovery. In fact, the 1993 stock assessment suggests the beginning of recruitment failure; the fishing mortality rate (F) for the population is 1.3, i.e., 79 percent of the population is harvested each year; only 2 percent of the population achieves spawning age; and fishing is conducted primarily on 0– and 1-year-old fish. Moreover, overall landings (recreational and commercial) have declined from over 80 million pounds (36 million kg) in 1980 to 7.8 million pounds (3.5 million kg) in 1993; the recreational catch has declined from 54 percent of the total landings in 1980 to 12 percent in 1993; and the commercial fishing effort has shifted, with 55 and 52 percent of the total commercial landings in 1992 and 1993, respectively, being taken in the EEZ compared with a low of 14 percent in 1973 and an average of 36 percent for the years 1972–93. These data clearly indicate that the weakfish stock is overfished and beginning to suffer recruitment failure. Harvest restrictions are definitely needed if weakfish are to recover.

Based on the recent stock assessments, NMFS will consider measures to regulate the Atlantic Coast weakfish fishery in the EEZ for the 1995 fishing year and beyond, including: (1) A prohibition on the taking or possession of weakfish in the EEZ; (2) applying state regulations to the EEZ; (3) imposition of specific Federal regulations on weakfish fishing in the EEZ; and (4) status quo or no action taken.

The Mid-Atlantic Council's workload will not permit it to undertake a Plan at this time. NMFS has determined that regulations in the EEZ must be implemented to support the CFMP for weakfish if there is to be a cooperative state and Federal effort to rebuild the weakfish stock.

NMFS has determined that the preparation of an EIS is appropriate, because of the potentially significant impact of EEZ regulations on the human environment and because no EIS currently exists. Participants in this fishery will be affected and may face more limited access to the weakfish resource, while the natural stocks of weakfish are allowed to recover.

Dated: January 12, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–1272 Filed 1–18–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 60, No. 12
Thursday, January 19, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Meeting

AGENCY: Forest Service, USDA.

SUMMARY: The Forest Service will hold a meeting to gather public comments on the development of a new fee system for ski areas on National Forest System lands on Wednesday, February 1, 1995, from 9 a.m. to 4 p.m., in Washington, DC. The purpose of the meeting is to obtain comments from interested persons regarding methods other than the current graduated rate fee system for determining the fair market value of the use of National Forest System lands for ski areas.

DATES: The meeting will be held Wednesday, February 1, 1995, from 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the J.W. Marriott Hotel, 1331 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: To request information about the meeting or a compilation of valuation methods under consideration, contact Lyle Laverty, Director, Recreation, Heritage, and Wilderness Resources Staff (2300), USDA Forest Service, PO Box 96090, Washington, DC 20090–6090, (202) 205–1706, FAX (202) 260–6510.

Persons who wish to make a brief oral presentation at the meeting should contact Lyle Laverty no later than January 27, 1995, in order to have time reserved on the agenda. In general, oral presentations will be limited to a total time of 3 minutes. Written comments may be submitted at the meeting; they also may be mailed to Lyle Laverty prior to the meeting and will be accepted up to February 10, 1995.

SUPPLEMENTARY INFORMATION: The Forest Service issues permits to more than 120 ski areas for use and occupancy of National Forest System lands. The current ski area permit fee system, the graduated rate fee system, has been the subject of several audits in the last five years, as well as administrative appeals and litigation concerning decisions as to how the fees are calculated. In response, the Forest Service is developing a new fee system for ski area permits based on fair market value. The purpose of this meeting is to gain public input on whether the Forest Service has identified pertinent methods for determining the fair market value of the use of National Forest System land by ski areas. Lyle Laverty will chair the meeting. The Forest Service will provide a compilation of the methods under consideration upon request.

Dated: January 13, 1995.

David G. Unger,

Associate Chief.

[FR Doc. 95–1350 Filed 1–18–95; 8:45 am]

BILLING CODE 3410–11–M

Rural Utilities Service

Preparation of an Environmental Impact Statement (EIS) To Fund Design and Construction of a Wastewater Collection and Treatment System in La Grange County, Indiana

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Intent (NOI) to prepare an EIS.

SUMMARY: The U.S. Department of Agriculture (USDA) announces its intent to prepare an EIS pursuant to the National Environmental Policy Act of 1969 (NEPA) (U.S.C. 4231 et seq.) in accordance with the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR 1500–1508) and Farmers Home Administration Instruction 1940–G. The USDA invites comment on the alternatives to be addressed in the EIS.

DATES: Comments will be accepted until February 21, 1995.

ADDRESSES: Please send written comments concerning this EIS to: Mr. Paul Neumann, State Environmental Coordinator, USDA—Rural Economic and Community Development, 5975 Lakeside Blvd., Indianapolis, IN 46278, (219) 290–3100, (219) 290–3011 FAX.

SUPPLEMENTARY INFORMATION:

Background

La Grange County occupies 380 square miles in northeastern Indiana on the Michigan/Indiana border. La Grange County is a rural county with a population of 30,000. With the exception of the towns of La Grange, Wolcottville, and Topeka, La Grange County relies on septic systems for the treatment and disposal of domestic waste water. The surficial geology of La Grange County is typical of glacial till and outwash regions and contains numerous natural lakes. These areas are usually level to nearly level. Soil types in the area typically have seasonal high water tables and contain a high percentage of sand sized particles; conditions which create a poor filter for the treatment of septic effluent. Beginning in the 1960's, recreational housing development began around the lakes in the county. Originally, this development consisted of weekend and summer cottages with septic systems of minimal treatment capacities. More recently, many of these houses have been converted to year around use. Improperly sized septic systems and unsuitable soil types have contributed to surface and ground water quality degradation in the areas surrounding the lakes. Water quality studies indicate that phosphorous, nitrates, and enteric pathogens directly attributable to failing septic systems are creating health concerns.

Declining water quality in the region has been evidenced by the increase in the number of water related complaints received by the County Health Department. Between 1990 and 1993, water and sewer complaints increased 29 percent. Most complaints consist of concerns of raw sewage odors, foaming agents in surface waters, algal blooms, nuisance vegetation, and fish kills.

Evidence of failing septic systems from around the lakes was obtained from surface water monitoring conducted annually since 1988. Lake water samples have been taken from the 29 largest lakes in the County. Sample sites were selected by the use of a fluorometer calibrated to detect urine, and detergents typically found in domestic waste water. Results of this testing indicate that in all areas of moderate to dense development, high levels of septic indicator substances are present.

Public Meetings and Feasibility Studies: La Grange County has aggressively pursued a solution to their rural sewage disposal problems since 1989. In 1989, the County Board of Supervisors created the La Grange County Sewer District (LCSD)and empowered board members to identify sewage disposal problems, develop treatment options, and pursue funding for solutions to identified problems. The LCSD raised funds to conduct preliminary engineering and feasibility studies to identify and prioritize the most severely impacted areas and to develop treatment options. Public meetings have been held in all regions of the County to inform county citizens as to the results of the preliminary studies and discuss the various treatment designs and options.

Preliminary Description of Treatment Design Alternatives for the EIS: The following is a preliminary list of treatment design alternatives identified in feasibility studies conducted for the LCSD. This list may be modified by additions or deletions. Public comment on the range of alternatives is hereby requested.

Continued Use of On-Site Waste Disposal (septic) Systems (NO ACTION): This action would cause continued degradation of the natural environment and increased health risks.

Regional Centralized Collection of Waste Water and Treatment by Conventional Activated Sludge Processes: This action will involve the use of either gravity or pressure sewers to convey waste water to a centralized facility. Collection and conveyance alternatives to be analyzed for this option include: Small diameter gravity systems, small diameter pressure systems using single connection effluent grinder pumps, and conventional gravity collector lines connected to pressure lines for conveyance to the treatment facility. Activated sludge process alternatives to be considered for this option include: Oxidation ditches and extended aeration.

Decentralized Collection and Treatment Systems: Collection and conveyance systems considered for these proposals will be the same as those analyzed for the centralized treatment facility option. The evaluation of the decentralized approach will involve the use of pressure or gravity collection systems to convey wastewater to a treatment site(s). Treatment proposals to be evaluated in the EIS include discharge of untreated effluent into (1) multiple engineered wetland treatment facilities with discharge options for treated effluent, or (2) holding lagoons for discharge of treated effluent through spray irrigation systems on to dedicated parcels of agricultural land. Effluent discharge options for the engineered wetland proposal include land application, surface water discharge, and subsurface injection.

Purpose of the EIS: The purpose of this EIS is to evaluate the potential impacts of the proposed alternative effluent collection and treatment strategies for La Grange County. The alternative strategies were developed as a result of public meetings and preliminary engineering studies. Discussion of each alternative's impact on the human environment, including risks to public health and safety, and effects on the natural environment will be presented. The need for the proposed action arises from the increased public health risks and degradation of surface and ground waters.

Dated: January 10, 1994.

Wally Beyer,

Administrator.

[FR Doc. 95–1316 Filed 1–18–95; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–005]

Frozen Concentrated Orange Juice From Brazil; Determination Not To Terminate a Suspended Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Determination Not to Terminate a Suspended Countervailing Duty Investigation.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its determination not to terminate the suspended countervailing duty investigation on frozen concentrated orange juice from Brazil.

EFFECTIVE DATE: January 19, 1995.

FOR FURTHER INFORMATION CONTACT: Alain Letort or Linda Ludwig, Office of Agreements Compliance, Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4243 or 3833; telefax: (202) 482–1388.

SUPPLEMENTARY INFORMATION:

Background

On November 8, 1994, the Department published in the Federal Register (59 FR 55637) its intent to terminate the suspended countervailing duty investigation on frozen concentrated orange juice from Brazil (see Frozen Concentrated Orange Juice from Brazil; Suspension of Investigation—48 FR 8839—March 2, 1983). Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that a suspended investigation is no longer of interest to interested parties and will terminate the suspended investigation if no domestic interested party objects to termination or no interested party requests an administrative review by the last day of the fifth anniversary month.

On December 6, 1994, Florida Citrus Mutual, a trade association, and certain U.S. producers of frozen concentrated orange juice, petitioners in the original investigation, objected to our intent to terminate the suspended investigation. Therefore, the requirements of 19 CFR § 355.25(d)(4)(iii) have not been met, and we will not terminate the suspended investigation.

This determination is in accordance with 19 CFR § 355.25(d)(4)(iii).

Dated: January 10, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–1349 Filed 1–18–95; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of revocation of Export Trade Certificate of Review No. 92–00008.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to International EXIM Corporation. Because this certificate holder has failed to file an annual report as required by law, the Secretary is revoking the certificate. This notice summarizes the notification letter sent to International EXIM Corporation.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (''the Act'') [Pub. L. 97–290, 15 U.S.C. 4011–21] authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III [''the Regulations''] are found at 15 CFR part 325 (1986). Pursuant to this authority, a certificate of review was issued on

September 8, 1992 to International EXIM Corporation.

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate (Section 308 of the Act, 15 U.S.C. 4018, § 235.14 (a) of the Regulations, 15 CFR 325.14 (a)). The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review [Sections 325.14 (b) of the Regulations, 15 CFR 325.14 (b)). Failure to submit a complete annual report may be the basis for revocation (Sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a) (3) and 325.14(c)).

On August 29, 1994, the Department of Commerce sent to International EXIM Corporation a letter containing annual report questions with a reminder that its annual report was due on October 23, 1994. Additional reminders were sent on October 24, 1994 and on November 16, 1994. The Department has received no written response from International EXIM Corporation to any of these letters.

On December 7, 1994, and in accordance with § 325.10 (c) (2) of the Regulations, [15 CFR 325.10 (c) (2), the Department of Commerce sent a letter by certified mail to notify International EXIM Corporation that the Department was formally initiating the process to revoke its certificate for failure to file an annual report. In addition, a summary of this letter allowing International EXIM Corporation thirty days to respond was published in the Federal Register on December 13, 1994 at 59 FR 64195. Pursuant to 325.10(c) (2) of the Regulations (15 CFR 325.10(c) (2)), the Department considers the failure of International EXIM Corporation to respond to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to International EXIM Corporation for its failure to file an annual report. The Department has sent a letter, dated January 13, 1995, to notify International EXIM Corporation of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the Federal Register 325.10(c) (4) and 325.11 of the Regulations, 15 CFR 324.10(c) (4) and 325.11 of the Regulations, 15 CFR 325.10(c) (4) and 325.11.

Dated: January 13, 1995.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 95–1348 Filed 1–18–95; 8:45 am]

BILLING CODE 3510–DR–P

Minority Business Development Agency

Business Development Center Applications: Tucson, AZ

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications to operate its Tucson Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Tucson, Arizona Metropolitan Area. The award number of the MBDC will be 09–10–95010–01.

DATES: The closing date for applications is February 21, 1995. Applications must be received in the MBDA Headquarters' Field Coordination Division on or before February 21, 1995. A pre-application conference will be held on February 1, 1995, at the Federal Building, 300 West Congress Street, Room 7L, Seventh Floor, Tucson, Arizona 85701.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, Office of Operations and Regional Management, Field Coordination Division, 14th and Constitution Avenue, N.W., Room 5075, Washington, D.C. 20230, (202) 482–6022.

FOR FURTHER INFORMATION, CONTACT: Steven Saho at (415) 744–3001.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from May 1, 1995 to May 31, 1996, is estimated at $198,971. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share of 15%, $29,846 in non-federal (cost-sharing) contributions for a total project cost of $198,971. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: The knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for

services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, ''Intergovernmental Review of Federal Programs,'' is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.''

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, section 105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: January 12, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–1258 Filed 1–18–95; 8:45 am]

BILLING CODE 3510–21–P

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs and National Estuarine Research Reserve

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the New York Coastal Management Program and the Jobos Bay (Puerto Rico) National Estuarine Research Reserve Program.

These evaluations will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended. The CZMA requires a continuing review of the performance of coastal states with respect to coastal management. Evaluation of Coastal Management Programs and National Estuarine Research Reserves requires findings concerning the extent to which a state has met the national coastal management objectives, adhered to its Coastal Program or Reserve Management Plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA. The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public.

Public meetings are held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of public meetings during the site visits.

The Jobos Bay National Estuarine Research Reserve in Puerto Rico site visit will be from February 27 to March 3, 1995. A public meeting will be held on Tuesday, February 28, 1995, at 1:30 p.m., at the Department of Natural and Environmental Resources Auditorium, Tropical Medicine Building, Puerta de Tierra, Puerto Rico.

The New York Coastal Management Program evaluation site visit will be from March 20 to March 24, 1995. A public meeting will be held on Wednesday, March 22, 1995 at 7:30 p.m. in the State Office Building, Happauge, Long Island, New York.

The States will issue notice of the public meeting(s) in a local newspaper(s) at least 45 days prior to the public meeting(s), and will issue other timely notices as appropriate.

Copies of the State's most recent performance reports, as well as OCRM's notifications and supplemental request letters to the States, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the site visit. Please direct written comments to Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910. When the evaluation is completed, OCRM will place a notice in the Federal Register announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT:

Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 713–3090, ext. 126.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: January 12, 1995.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone.

[FR Doc. 95–1257 Filed 1–18–95; 8:45 am]

BILLING CODE 3510–08–M

[Docket No. 950113015–5015–01]

RIN 0648–ZA12

Global Learning and Observations To Benefit the Environment (GLOBE)

AGENCY: National Oceanic and Atmospheric Administration, COMMERCE (DOC).

ACTION: NOTICE, Competitive Solicitation for a GLOBE Joint Project Agreement.

SUMMARY: GLOBE is an international environmental education and science program involving students in kindergarten through twelfth grade (or equivalent) throughout the world. The goals of the GLOBE Program are to enhance the environmental awareness of individuals worldwide, to increase scientific understanding of the Earth by collecting data for use by the international community of environmental scientists and others, and to help all students reach higher standards in science and mathematics education. The goals will be accomplished through a number of activities, including having students making environmental observations at or near their schools. The data resulting from these observations will be transmitted through the Internet and satellite communications for processing. As these data are processed, global environmental visualizations will be created based on the students' observations and other environmental information and relayed back to the students. The data acquired by the students will also be available through the Internet to environmental scientists throughout the world to support their research.

These goals will be accomplished in the United States through a partnership between the Federal Government and the private sector, and internationally through partnerships between the United States and other countries.

This notice solicits proposals for the private sector partner (''GLOBE Private Sector Partner'') for the GLOBE Program, which must be a non-profit organization, from private sector non-profit organizations and from other respondents that are willing to form non-profit organizations to enter into a Joint Project Agreement (''JPA'') to solicit and manage private resources to assist many schools in the U.S. and overseas to participate in the GLOBE Program, and to encourage and coordinate private sector participation in the GLOBE Program in other ways. The National Oceanic and Atmospheric Administration (NOAA), the lead agency of the public sector GLOBE Program (''GLOBE Program''), which is a U.S. Government interagency activity that plans and implements the national and international GLOBE Program, has determined that a JPA is the most effective mechanism to engage in a partnership with the U.S. Globe Private Sector Partner, since program goals and program implementation will be of mutual interest, and the parties to the JPA will agree to bear equitable portions of the costs of the overall program consistent with their responsibilities.

DATES: Proposals for the GLOBE Joint Project Agreement to be selected as a result of this solicitation should be received by February 21, 1995. Proposals received after that date may be considered if a qualified respondent has not yet been selected when a proposal is received.

ADDRESSES: Proposals must be sent by mail to Thomas N. Pyke, Jr., Director, The GLOBE Program, 744 Jackson Place, N.W., Washington, D.C. 20503 or delivered to Director, The GLOBE Program, The White House, New Executive Office Building, 725 17th Street, N.W., Room G–1, Washington, D.C. 20006. FACSIMILE COPIES ARE NOT ACCEPTABLE.

FOR FURTHER INFORMATION CONTACT: Interested respondents should contact Thomas N. Pyke, Jr., Director, The GLOBE Program, at (202) 395–7600.

SUPPLEMENTARY INFORMATION:

I. Description of The GLOBE Program and U.S. Government Involvement

GLOBE is an international environmental education and science program involving students in kindergarten through twelfth grade (or equivalent) throughout the world, which will enhance the environmental awareness of individuals worldwide, increase scientific understanding of the Earth by collecting data for use by the international community of environmental scientists and others, and help all students reach higher standards in science and mathematics education.

In the United States, the public sector GLOBE program is an interagency effort led by NOAA, which is an agency of the U.S. Department of Commerce. The other Federal agencies involved are the National Aeronautics and Space Administration (NASA), the National Science Foundation (NSF), the Environmental Protection Agency (EPA), the Departments of Education and State; and the Council on Environmental Quality and the Office of Science and Technology Policy at the White House. Over 100 other nations have expressed an interest in the GLOBE Program. The first bilateral

international GLOBE agreement was signed with the Russian Federation on December 16, 1994.

Working with its international partner nations and with the GLOBE Private Sector Partner, the GLOBE Program will encourage participation in the program and the use of GLOBE student measurement data by providing upon request information on its plans and activities to individuals and organizations throughout the world through a wide range of publications, press releases, and media events. It will design a global information network, develop prototype school computer system hardware and software, and specify scientific instruments and develop scientific and educational materials for use by teachers and students. It will plan and conduct a worldwide training effort for teachers in GLOBE schools and will develop and operate a GLOBE central data processing and visualization system.

U.S. Government funding to support the GLOBE Program is contained in the budgets of NOAA, NASA, NSF, and EPA. It is anticipated that a very significant portion of the resources for the overall GLOBE Program will be provided over the long term by non-U.S. Government sources, including resources from the private sector and other nations.

The purpose of soliciting a GLOBE Private Sector Partner, to be recognized through this JPA, is to provide a mechanism by which the GLOBE Program and the GLOBE Private Sector Partner can collaborate in supporting the implementation of GLOBE in schools. A three-year, renewable Joint Project Agreement is planned, under which the GLOBE Private Sector Partner will be responsible for coordinating and encouraging private sector participation in GLOBE.

The GLOBE Program, through its participating Federal agencies, may enter any necessary and appropriate agreements with governmental entities other than the U.S. Government and with other authorities having responsibility for the schools participating in the GLOBE Program as to the acceptable use of equipment and other materials provided by the U.S. Government and by the GLOBE Private Sector Partner through this JPA in support of the GLOBE Program.

NOAA initially published a Federal Register notice on August 24, 1994, soliciting overall interest from non-profit, research or public organizations to participate in JPA's supporting the GLOBE Program (59 FR 43555). On November 23, 1994, NOAA published a second Federal Register notice, announcing registration procedures for U.S. schools to be designated as GLOBE schools, and soliciting applications for Federal assistance in the form of computers and other resources to enable schools to become GLOBE schools (59 FR 60351).

II. GLOBE Private Sector Partner Responsibilities

The GLOBE Private Sector Partner, a non-profit organization, will solicit and manage private resources to assist many schools in the U.S. and in other countries to participate in the GLOBE Program, and it will otherwise encourage and coordinate private sector participation in the GLOBE Program. In doing so, it will promote improved scientific understanding of the environment and environmental awareness through environmental education and other appropriate means.

The GLOBE Private Sector Partner will solicit, accept and expend substantial amounts of private funding and other private resources to implement a significant part of the GLOBE Program in such a way as to build on, complement, and complete the information systems, scientific and educational support, and other capabilities initiated or created with funding from the U.S. Government, as quickly as possible, so as to meet the goals of the GLOBE Program, as stated above. The GLOBE Private Sector Partner will facilitate support of participation of schools in the GLOBE Program in such a way as to be inclusive in the opportunity for the Nation's and the world's young people to participate in the program.

The GLOBE Private Sector Partner will purchase, or accept as donations, computers and other equipment necessary for schools to participate in the GLOBE Program, based on prototypes and specifications developed by the public sector GLOBE Program. In consultation with the public sector GLOBE Program, the GLOBE Private Sector Partner will distribute computer hardware, software, and scientific instruments to schools to enable them to participate in the GLOBE Program. It will support equipment installation, systems support, training, and educational support services. The GLOBE Private Sector Partner will also support, as needed and to the extent possible, terrestrial or satellite-based communications links between schools and Internet access points.

The GLOBE Private Sector Partner will solicit, receive, manage, and maintain control over private funding and other private resources necessary to participate as a partner with the public sector GLOBE Program. In soliciting and accepting donations of resources, the GLOBE Private Sector Partner will avoid preferential treatment, the appearance of preferential treatment, or endorsement and other appearances of impropriety consistent with guidelines developed by the Private Sector Partner and approved by the GLOBE Program. NOAA and other agencies of the U.S. Government may report, advertise, or otherwise publicize the existence, source, and nature of donations to the Private Sector Partner. The use by the GLOBE Private Sector Partner of the term ''GLOBE'' or any other reference to its association with The GLOBE Program in performing all activities through which it carries out its responsibilities under the JPA shall be as a result of a revocable license to do so granted to the GLOBE Private Sector Partner by the U.S. Government through the Joint Project Agreement established as a result of this solicitation.

The Private Sector Partner will seek to involve a broad range of other private sector participants, including foundations and for-profit business organizations, in collaborative support of the GLOBE Program. The Private Sector Partner may work with similar private organizations in other nations to accomplish its responsibilities to support the worldwide implementation of the GLOBE Program.

The GLOBE Private Sector Partner is strongly encouraged to establish or support the establishment of a highly visible public environmental learning center to support the goals of the GLOBE Program. It will include appropriate exhibit space that features vivid, imaginative displays based on data acquired at GLOBE schools combined with real-time and historical satellite imagery and other environmental data and information. It is expected that such a center will employ advanced virtual reality technology so as to provide an authentic and stimulating experience for large numbers of visitors.

Any private funds or other resources received as charitable contributions by the GLOBE Private Sector Partner intended to implement its responsibilities under this JPA shall be employed only to support activities as permitted under the GLOBE Private Sector Partner's charter as a non-profit organization, and must be consistent with GLOBE Program goals and priorities.

The Federal Government will not assume liability for the acts of the GLOBE Private Sector Partner or any third persons arising out of its involvement with the GLOBE Program

or its actions under the JPA, nor will the Federal Government reimburse or indemnify the GLOBE Private Sector Partner for its liability due to any losses resulting in any way from its actions arising out of its involvement in the GLOBE Program or its actions under the JPA.

III. Authority

NOAA is authorized to enter into Joint Project Agreements in accordance with the U.S. Department of Commerce Joint Project Authority, 15 U.S.C. 1525, which authorizes the Secretary to engage in joint efforts of mutual interest with non-profit, research, or public organizations upon an equitable distribution of the costs of the project. This Agreement is undertaken by NOAA in accordance with 15 U.S.C. 1540, which authorizes the Secretary of Commerce, through the Under Secretary of Commerce for Oceans and Atmosphere, to enter into cooperative agreements and other financial agreements to aid and promote scientific and educational activities to foster public understanding of NOAA or its programs and to solicit private donations in support of such activities; 15 U.S.C. 2938, which authorizes NOAA to provide global change research findings to other Federal agencies; and, 49 U.S.C. App. 1463, which authorizes NOAA to engage in activities that support weather and other related environmental forecasting.

IV. Eligibility Criteria

Each respondent must itself be a non-profit private entity or be a person or private entity that proposes to form a suitable non-profit private entity to become the GLOBE Private Sector Partner. The entity proposed to be the GLOBE Private Sector Partner must be chartered and organized to operate exclusively for charitable and educational purposes and to support and promote increased scientific understanding of the environment and education of the people of the world about the environment though its active involvement in support of the GLOBE Program. Respondents will be required to raise funding and provide private support for non-governmental activities related to the GLOBE Program.

V. Proposal Submission Guidelines

The guidelines for proposals provided below are mandatory. Failure to adhere to these guidelines may result in proposals being returned without review.

(a) *Proposals:* (1) Respondents must submit one original and two copies of their proposals. (2) Proposals must be limited to 40 single-space typewritten pages (numbered), including vitae, and all appendices. (3) Proposals must be sent or delivered to The GLOBE Director at the above address. (4) Facsimile transmissions or electronic mail submissions will not be accepted.

(b) *Required Elements:* All Proposals must include the following elements: (1) A Statement of Eligibility relative to the Eligibility Criteria in Section IV above. (2) A Statement of proposed activities and how the respondent will organize to carry out these activities, specifically addressing all evaluation factors set forth below and the GLOBE Private Sector Partner responsibilities as described in Section II above.

VI. Evaluation of JPA Proposals

Proposals will be evaluated based on three selection factors and additional credit factor, which are derived from the U.S. GLOBE Private Sector Partner responsibilities specified above, and in the context of the GLOBE Program goals. These goals are to enhance environmental awareness of individuals worldwide, to increase scientific understanding of the Earth, and to help all students reach higher standards in science and mathematics education. The selection factors will be given approximately equal value in the evaluation of proposals.

—The estimated amount of private monetary and in-kind resources that would be made available within the first year after the JPA is signed by the proposed Private Sector Partner to support the widespread implementation of the GLOBE Program, both domestically and internationally, including a willingness to commit to specific funding goals and schedules. It is expected that the GLOBE Private Sector Partner will provide support during the first year for at least 1,000 GLOBE schools, with a nominal value of such support of $5,000 per school, and that support of well over 10,000 schools be planned over the long term.

—The ability of the proposed GLOBE Private Sector Partner to promote and coordinate the involvement of a broad range of other private sector participants, including foundations and for-profit business organizations, in collaborative support of the GLOBE Program. The GLOBE Private Sector Partner will be expected to raise private funding and support to achieve the goal of providing a very significant amount of total GLOBE funding from private sector resources over the long term.

—The ability of the Private Sector Partner to facilitate support of participation by thousands of schools in the GLOBE Program in a way so as to involve diverse groups of schools and to be inclusive in the opportunity to participate for the Nation's and the world's young people.

As an additional credit factor, proposals will be given additional credit in the evaluation process if they propose that the GLOBE Private Sector Partner establish or support the establishment of a highly visible public environmental learning center and appropriate exhibit space that features vivid, imaginative displays based on data acquired at GLOBE schools combined with real-time and historical satellite imagery and other environmental data and information. It is expected that such a center would utilize advanced virtual reality technology so as to provide an authentic and stimulating experience for large numbers of visitors.

VII. Selection Procedures

NOAA will convene an interagency review panel to evaluate the proposals received in accordance with the factors stated above, and to make recommendations to the GLOBE Director, who is an official of and is acting on behalf of NOAA. If there are more than five proposals received prior to the final selection being made by the GLOBE Director, the panel shall specifically designate no more than five of the proposals as those the panel has rated most highly. The review panel's recommendations, along with overall program goals and the evaluation factors stated above, will be considered by the GLOBE Director in the final selection of the GLOBE Private Sector Partner.

VIII. Other Information

Intergovernmental Review: This action has been determined not to require intergovernmental review.

Classification: This action has been determined to be not significant for purposes of E.O. 12866.

PRA: This action has been determined not to be subject to the Paperwork Reduction Act.

Thomas N. Pyke, Jr.,

Director, The GLOBE Program.

[FR Doc. 95–1423 Filed 1–17–95; 12:46 pm]

BILLING CODE 3510–12–M

[I.D. No. 010495A]

Marine Mammals; Pinniped Removal Authority

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of approval of an application for lethal removal and notice of availability of an Environmental Assessment.

SUMMARY: NMFS announces approval of an application from the State of Washington to authorize the intentional lethal taking of individually identifiable California sea lions that have preyed on wild winter-run steelhead that migrate through the Ballard Locks in Seattle, WA. NMFS also announces the availability of an Environmental Assessment (EA) that was prepared jointly by NMFS and the Washington State Department of Fish and Wildlife. The EA examines the environmental consequences of alternatives for protecting the depressed Lake Washington winter-run of wild steelhead migrating through the Lake Washington Ship Canal and Ballard Locks from predation by California sea lions. The proposed action is authorized under section 120 of the Marine Mammal Protection Act (MMPA).

ADDRESSES: A copy of the EA may be obtained by writing to William Stelle, Jr., Director, Northwest Region, NMFS, 7600 Sand Point Way, NE, Seattle, WA 98115 or by telephoning one of the contacts listed below.

FOR FURTHER INFORMATION CONTACT: Joe Scordino, Northwest Region, NMFS, 206–526–6143 or Ken Hollingshead, Office of Protected Resources, NMFS, 301–713–2055.

SUPPLEMENTARY INFORMATION:

Background

Section 120 of the MMPA (16 U.S.C. 1361 *et seq*.) as amended in 1994, provides the Secretary of Commerce (Secretary) the discretion to authorize the intentional lethal taking of individually identifiable pinnipeds that are having a significant negative impact on salmonids that are either: (1) Listed under the Endangered Species Act (ESA), (2) approaching a threatened or endangered status, or (3) migrate through the Ballard Locks in Seattle. The authorization applies only to pinnipeds that are not: (1) Listed under the ESA, (2) designated as depleted, or (3) designated a strategic stock. The process for determining whether to implement the authority in section 120 commences with a state submitting an application that provides a detailed description of the interaction problem, the means of identifying the individual pinnipeds, and expected benefits of the taking. Within 15 days of receiving an application, the Assistant Administrator for Fisheries, NOAA (AA) must determine whether the applicant has produced sufficient evidence to warrant establishing a Pinniped-Fishery Interaction Task Force (Task Force) to address the situation described in the application. If the application provides sufficient evidence, NMFS must publish a document in the Federal Register requesting public comment on the application, and establish a Task Force consisting of: (1) NMFS/NOAA staff, (2) scientists who are knowledgeable about the pinniped interaction that the application addresses, (3) representatives of affected conservation and fishing community organizations, (4) treaty Indian tribes, (5) the states, and (6) such other organizations as NMFS deems appropriate. The Task Force must, to the maximum extent practicable, consist of an equitable balance among representatives of resource user interests and nonuser interests. Meetings of the Task Force must be open to the public. Within 60 days after establishment, and after reviewing public comments in response to the Federal Register document, the Task Force is to recommend to NMFS approval or denial of the proposed intentional lethal taking along with recommendations on the proposed location, time, and method of such taking, criteria for evaluating the success of the action, and the duration of the intentional lethal taking authority. The Task Force must also suggest non-lethal alternatives, if available and practicable, including a recommended course of action. Within 30 days after receipt of the Task Force's recommendations, NMFS must either approve or deny the application. If such application is approved, NMFS must immediately take steps to implement the intentional lethal taking. The intentional lethal taking is to be performed by Federal or state agencies, or qualified individuals under contract to such agencies.

On July 6, 1994, the Secretary received an application, dated June 30, 1994, from the State of Washington, to authorize the intentional lethal taking of individually identifiable California sea lions (*Zalophus californianus*) that prey on wild winter-run steelhead (*Oncorhynchus mykiss*) that migrate through the Ballard Locks in Seattle, WA. The State requested that the Secretary establish a Task Force and initiate the process provided by section 120 of the MMPA so that lethal removal, if approved, is authorized in time for protection of the 1994–95 winter-run of wild steelhead.

The AA determined that the State's application was sufficient to warrant formation of a Task Force because all the necessary determinations and required information were either in the letter or in the documents referenced in the letter. Research by the State and NMFS has shown that California sea lions consume as much as 60 percent of the returning adult wild steelhead as they migrate through the Ballard Locks area, and that such exploitation rates can have a significant impact on the status or recovery of the Lake Washington winter-run wild steelhead. Notice of receipt and acceptance of the State's application was published in the Federal Register on August 2, 1994 (59 FR 39325) with a request for public comments. A Pinniped-Fishery Interaction Task Force on the sea lion/steelhead conflict at the Ballard Locks was established on September 30, the date of their first public meeting. Notice of establishment of the Task Force and its meeting was published in the Federal Register on September 27, 1994 (59 FR 49234). Subsequent meetings were announced through NOAA Press Releases and reported in local media. The Task Force held 3 more meetings (open to the public) for a total of 8 days of meetings to consider pertinent data on California sea lions, winter-run steelhead, the nature and extent of the interaction at the Ballard Locks, the design and operation of the Locks/fishway facility, past measures and considerations for reducing or eliminating the sea lion/steelhead interaction, and public comments on the State's application received during the comment period.

The Task Force submitted its recommendation on the State's request for lethal removal to NMFS on November 23, 1994. By a 13 to 8 vote, the Task Force recommended approval of lethal removal of individually identifiable California sea lions, with conditions on when lethal removal may occur and the numbers and identity of animals that it may be applied to. A minority view from Task Force members opposed to lethal removal was submitted on December 5, 1994. Details of the Task Force recommendations are included in the EA.

Findings and Conditions

Based on the Task Force's recommendations and scientific information collected since 1985 on the California sea lion/steelhead interaction, NMFS has concluded that lethal removal of California sea lions at the Ballard Locks is a necessary, last resort for removing the sea lion preying on steelhead based on: (1) The declining and depressed status of the wild winter-run steelhead and the need to prevent

mortality of returning adult spawners; (2) the vulnerability of returning adult spawners to sea lion predation at the Ballard Locks and the lack of feasible and effective non-lethal measures to eliminate the problem this season; (3) the insignificant impacts to the California sea lion population of lethal removal of relatively few male, sea lions; (4) the analysis of alternatives (presented in the EA) that indicates lethal removal, with conditions, is the most appropriate course of action.

In accordance with section 120 of the MMPA, NMFS has approved the lethal taking of individually identifiable California sea lions at the Ballard Locks and sent the State of Washington a Letter of Authorization stipulating the conditions on the authorization for lethal removal. Lethal removal is authorized only if the State is in compliance with the following terms and conditions.

1. Non-lethal deterrence efforts, such as acoustic deterrence, must be attempted prior to lethal removal. If an ''acoustic barrier'' is implemented, sea lions that enter and remain in the ensonified area exhibiting predatory behavior should be captured and placed in captivity, if temporary holding is feasible and practical.

2. Only ''predatory'' California sea lions may be lethally removed. A ''predatory'' sea lion is an individually identified sea lion (i.e., an animal with a brand mark, tags, or other distinguishable natural marks) that has been observed preying on steelhead at any time (including past years) in the Lake Washington Ship Canal.

3. If feasible and practical, predatory sea lions are to be captured, and placed by the state in temporary holding facilities for the duration of the run.

a. The State must contact aquarium and zoo facilities in the Northwest to determine availability of suitable holding enclosures for temporary care and feeding of sea lions for up to 5 months. If appropriate facilities are available, the State shall make the necessary arrangements for holding sea lions.

b. The State also shall explore the possibility of alternate enclosures that meet animal care requirements.

c. The State shall ensure that holding facilities minimize any public observation of, or interaction with, captive animals.

4. Lethal removal of predatory sea lions is authorized only if the State determines, and obtains concurrence with such determination from the NMFS Northwest Regional Director, that: (1) Adequate holding facilities are unavailable, or (2) temporary holding is infeasible or impractical.

5. Lethal removal is not to occur unless and until the sea lion predation rate exceeds 10 percent of the available steelhead in any consecutive 7-day period after January 1, 1995. If, after the initiation of lethal removals, the predation rate equals or falls below 10 percent for 14 consecutive days when steelhead have been recorded passing through the fish ladder, removals of newly-identified predatory sea lions will cease until the predation rate again exceeds 10 percent for any consecutive 7-day period. However, predatory sea lions identified prior to the end of a 14-day reduced predation period may still be removed.

6. Active capture methods utilizing entangle nets and potential use of drugs that may result in sea lion mortality are authorized only during the period when lethal removal is authorized in accordance with Condition 5. above.

7. The State will convene an Animal Care Committee (ACC) to provide recommendations on the handling of the sea lions.

a. The ACC membership is: (1) To consist of veterinarians, marine mammal caretakers, and Federal and State marine mammal biologists; and (2) to be approved by the NMFS Northwest Regional Director.

b. The ACC shall review and make recommendations on the adequacy of the temporary holding enclosures and the means of feeding and caretaking.

c. The ACC shall review any complications with captive holding and make recommendations regarding the care of the sea lions, including euthanasia if, in their opinion, it is necessary.

d. The ACC shall review active capture protocols and make recommendations on the procedures and use of any drugs.

e. The ACC shall develop protocols for euthanizing sea lions.

8. Predatory sea lions that are identified for lethal removal are to be captured and euthanized using protocols developed by the ACC. However, the State shall provide the sea lions identified for lethal removal to an Indian tribe with treaty rights to harvest marine mammals in the Lake Washington Ship Canal that requests the animals for subsistence use. In that circumstance, the State shall allow the tribe to dispatch the animal in a humane manner that allows for subsistence use.

9. The State must notify NMFS if 15 sea lions are removed (nonlethal or lethal). NMFS will immediately reconvene the Task Force for the purpose of evaluating the effectiveness of the measures implemented and making recommendations on further actions.

10. This authorization may be modified or revoked by NMFS based on any Task Force recommendations provided under Condition 9. above.

11. This authorization is valid until June 31, 1997, although it may be modified as needed.

a. On September 1 of each year that this authorization is valid, the State must submit a report on efforts undertaken to reduce predation, its compliance with the conditions in this authorization, and how the State will comply with the conditions in the following year.

b. Pursuant to 16 U.S.C. 1389(c)(5), after receipt of the report, NMFS will ask the Task Force to evaluate the State's report and the effectiveness of the alternative actions and any lethal take. NMFS will consider the report, the Task Force's recommendations, and the issues set out in 16 U.S.C. 1389, and may modify the authorization and conditions for the following year, or revoke the authorization for lethal take.

National Environmental Policy Act (NEPA)

NEPA requires that Federal agencies conduct an environmental analysis of their actions to determine if the actions may affect the environment. Accordingly, NMFS and the Washington State Department of Fish and Wildlife produced an EA that explores the environmental consequences of a combination of actions including lethal removal as a last resort to protect the depressed Lake Washington winter-run of wild steelhead migrating through the Lake Washington Ship Canal and Ballard Locks from predation by California sea lions. The number of steelhead escaping to spawn has declined from about 2,600 fish in the 1983 season to only 70 fish last season. Action to reduce or eliminate predation is necessary, because California sea lions have consumed as much as 60 percent of the returning adult wild steelhead as they migrate through the Ballard Locks area, and such exploitation rates can have a significant impact on the status or recovery of the Lake Washington winter-run steelhead.

The proposed action is to lethally remove individually identifiable sea lions as a last resort, only after non-lethal deterrence in combination with captive holding are not sufficient to remove predatory sea lions from the Locks area. All practicable attempts would be made to capture and place the predatory sea lions in captivity during the duration of the run prior to lethal

taking. Lethal taking would be applied only to those few predatory sea lions that have been observed to prey on steelhead. Lethal removal is proposed as a last resort, because non-lethal alternatives have been shown to have limited success in reducing predation. Additional conditions on lethal removal are described above.

NOAA has evaluated the environmental consequences of the proposed action and has concluded that it is unlikely to result in any significant impacts on the human environment and therefore has made a finding of no significant impact (FONSI). The EA and FONSI have been prepared in accordance with NEPA and implementing regulations at 40 CFR parts 1500 through 1508 and NOAA Administrative Order 216–6. In addition, in accordance with the Washington State Environmental Policy Act, the Washington State Department Of Wildlife has made a final determination of non-significance pursuant to chapter 232–19 of the Washington Administrative Code.

Dated: January 12, 1995.

Pat Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–1339 Filed 1–18–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 010995F]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of an application for modification 5 to scientific research and enhancement permit 795 (P503A).

Notice is hereby given that the Idaho Department of Fish and Game (IDFG) has applied in due form for modification 5 to scientific research and enhancement permit 795 (P503A) to take listed species as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-227). Permit 795, issued on July 29, 1992, authorizes IDFG to carry out scientific research and enhancement activities, including a captive broodstock program, with endangered Snake River sockeye salmon (*Oncorhynchus nerka*).

For modification 5, IDFG requests authorization to: (1) Release second generation progeny of anadromous sockeye salmon that returned to Redfish Lake in 1991; (2) release progeny of 1991 outmigrant sockeye females spawned in 1993 with anadromous sockeye males; (3) release broodyear 1993 progeny of anadromous sockeye females that returned to Redfish Lake in 1993; and (4) increase the annual number of outmigrant sockeye juveniles to be trapped and handled at the Redfish Lake Creek weir. Activities 1–3 are proposed for 1995 only. Activity 4 is proposed for the duration of the permit. Permit 795 expires on July 31, 1997.

Written data or views, or requests for a public hearing on this application should be submitted to the Chief, Endangered Species Division, Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226, within 30 days of the publication of this notice. Those individuals requesting a hearing should set out the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, NMFS, NOAA, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, NMFS, NOAA, 525 North East Oregon St., Suite 500, Portland, OR 97232 (503-230-5400).

Dated: January 11, 1995.

Patricia Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–1342 Filed 1–18–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 011095D]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of an application for a scientific research permit (P770#68) and an application for modification 2 to scientific research permit 900 (P770#66).

Notice is hereby given that the NMFS Northwest Fisheries Science Center has applied in due form for a scientific research permit (P770#68) and modification 2 to scientific research permit 900 (P770#66) to take listed species as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-227).

The NMFS Northwest Fisheries Science Center requests a permit to conduct 6 studies with a take of the following endangered species: Adult and juvenile Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*), juvenile Snake River fall chinook salmon (*Oncorhynchus tshawytscha*), and juvenile Snake River sockeye salmon (*Oncorhynchus nerka*). The objective of study 1 is to compare the survival to adulthood of spring/summer chinook salmon smolts transported from either Lower Granite or Little Goose Dam on the Snake River to below Bonneville Dam on the Columbia River with the survival to adulthood of smolts migrating volitionally through 6 or 7 dams and reservoirs under prevailing river conditions. The objective of study 2 is to assess the migration timing and relative survival of transported and inriver juvenile chinook salmon migrating volitionally from Bonneville Dam to the mouth of the Columbia River. The objective of studies 3–6 is to determine the effectiveness of fish guidance devices and other bypass system components being considered for installation at 4 Snake and Columbia River hydroelectric dams for the purpose of improving anadromous fish passage past these dams during juvenile outmigration. Studies 1 and 2 are requested for a duration of 5 years. Studies 3–6 are requested for a duration of 1 year.

For modification 2 to Permit 900, the NMFS Northwest Fisheries Science Center requests an increase in the take of juvenile, endangered, Snake River spring/summer chinook salmon associated with study 3, a preliminary evaluation of the new juvenile collection, bypass, and sampling facility at McNary Dam. The increased take is requested to test an automatic system for detecting and diverting run-of-the-river fish tagged with passive integrated transponders (PIT) from the population of fish moving through the collection facility. The purpose of the automatic PIT tag detector and diversion system is to facilitate the collection of scientific information on juvenile salmonid migration while minimizing adverse impacts to the fish. The increased take is requested for 1995 only.

Written data or views, or requests for a public hearing on this application

should be submitted to the Chief, Endangered Species Division, Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226, within 30 days of the publication of this notice. Those individuals requesting a hearing should set out the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the Applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, NMFS, NOAA, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, NMFS, NOAA, 525 North East Oregon St., Suite 500, Portland, OR 97232 (503-230-5400).

Dated: January 11, 1995.

Patricia Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–1341 Filed 1–18–95; 8:45 am]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Conflict Mediation Training for AmeriCorps Members; Availability of Funds

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National and Community Service announces the availability of approximately $400,000 to support one new grant that would assist AmeriCorps programs in providing Conflict Mediation training for approximately 8,000 AmeriCorps Members nationwide. The grant or cooperative agreement will cover a period of 12 months, beginning April 1, 1995, with the possibility of renewal based on performance, need and availability of funds.

DATES: All applications must be received by 3:30 p.m., Eastern Standard Time, February 24, 1995, to be eligible. Facsimiles will not be accepted.

ADDRESSES: Applications should be submitted to Patricia Holliday, The Corporation for National Service, 9th Floor, Room 9807, 1201 New York Ave. N.W., Washington, D.C. 20525.

FOR FURTHER INFORMATION CONTACT: Please send requests for the application to Patricia Holliday, Grants and Contracts Officer, The Corporation for National Service, 9th Floor, Room 9807, 1201 New York Ave. N.W., Washington, D.C., 20525. Phone: (202) 606–5000 ext. 187; TTD: (202) 565–2799.

SUPPLEMENTARY INFORMATION: The Corporation for National Service (the Corporation) is a government organization created by the National and Community Service Trust Act of 1993. The Corporation's mission is to engage Americans of all ages and backgrounds in community-based service. This service will address the nation's education, public safety, human and environmental needs to achieve direct and demonstrable results. In doing so, the Corporation will foster civic responsibility, strengthen the ties that bind us together as a people, and provide educational opportunity for those who make a substantial commitment to service.

The Corporation will fund one grant to assist AmeriCorps programs in providing Conflict Mediation training for AmeriCorps Members. AmeriCorps Members provide service in many different sites across the country. As a result, training should be designed for small groups at sites located throughout the United States. The Corporation will be especially interested in proposals that offer to tap into a national network of local training providers so that AmeriCorps programs can benefit from receiving training from local trainers who are familiar with local issues and can continue to be involved with AmeriCorps programs beyond the time frame of the award. In addition, a one-day training curriculum that is specific to the needs of AmeriCorps members should be developed.

The Conflict Mediation training should provide AmeriCorps members with skills to:

1. Manage interpersonal conflict in the workplace and community settings;

2. Negotiate intergroup and community conflicts and issues; and

3. Participate in collaborative planning and problem solving processes with individuals and groups in the community.

The grant will be awarded competitively, based on criteria in the application, including consideration for organizations that propose cost-effective methods and cost-sharing.

Authority: 42 U.S.C. 12501 et seq.

Dated: January 12, 1995.

Terry Russell,

General Counsel, Corporation for National Service.

[FR Doc. 95–1269 Filed 1–18–95; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0066]

Clearance Request for Professional Employee Compensation Plan

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0066).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Professional Employee Compensation Plan.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

OFPP Policy Letter No. 78–2, March 29, 1978, requires that all professional employees shall be compensated fairly and properly. Implementation of this requires that a total compensation plan setting forth proposed salaries and fringe benefits for professional employees with supporting data be submitted to the contracting officer for evaluation.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including

suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., Room 4037, Washington, DC 20405, and the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, 5,340; responses per respondent, 1; total annual responses, 5,340; preparation hours per response, .5; and total response burden hours, 2,670.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0066, Professional Compensation Plan, in all correspondence.

Dated: December 16, 1994.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–1253 Filed 1–18–95; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

ACTION: Notice.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee meeting:

Date of Meeting: February 7–9, 1995 from 0830 to approximately 1730.

Place: Tyndall Air Force Base, Tyndall Conference Center, Panama City, FL.

Matters To Be Considered: Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

For Further Information Contact: Ms. Ann Maxwell, 2200 Clarendon, Suite 900, Arlington, VA 22201, 703–525–9400.

Dated: January 12, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–1217 Filed 1–18–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

USAF Scientific Advisory Board Meeting

The Theater Air Defense Independent Review Team of the USAF Scientific Advisory Board will meet on 9–10 February 1995 at Los Angeles AFB, CA from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to evaluate the Airborne Laser Program Data for the Theater Air Defense COEA submission.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–1223 Filed 1–18–95; 8:45 am]

BILLING CODE 3910–01–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, January 25, 1995. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1:00 p.m. in the Goddard Conference Room of the Commission's offices in West Trenton, New Jersey.

An informal conference among the Commissioners and staff will be open for public observation at 10:30 a.m. at the same location and will include a presentation on a proposed Commission Geographic Information System and a discussion of staff response documents.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *EXXON Company, USA D–93–51.* An application for approval of a ground water withdrawal project to supply up to 21 million gallons (mg)/30 days of water as part of the applicant's ground water remediation system from Well Nos. RW–2, RW–8, RW–9, RW–10 and RW–11, and to limit the withdrawal from all wells to 21 mg/30 days. The project is located in Greenwich Township, Gloucester County, New Jersey.

2. *Glen Alsace Water Co. D–94–14 CP.* A project to withdraw up to 72 mg/30 days of water from the applicant's proposed surface water intake on the north bank of the Schuylkill River just downstream of the confluence of Antietam Creek in Exeter Township, Berks County, Pennsylvania, and to limit the withdrawal from all wells and surface water sources to 105 mg/30 days. The project withdrawal will be used for public water supply and serve Exeter Township and a portion of Saint Lawrence Borough, both in Berks County.

3. *Ponderosa Fibres of Pennsylvania Inc. D–94–22.* An application for approval of an industrial wastewater treatment plant (IWTP) designed to discharge an average monthly flow of 0.36 million gallons per day (mgd) to the Lehigh River via a proposed diffuser outfall located 700 ft. downstream of the confluence of Hokendauqua Creek in Northampton Borough, Northampton County, Pennsylvania. The IWTP will provide secondary biological treatment via the activated sludge process and will serve the applicant's proposed paper pulp mill adjacent to the U.S. Generating Company's Northampton Power Project which will provide the pulp mill with process water and steam.

4. *Mantua Township Municipal Utilities Authority D–94–35 CP.* An application for approval of a ground water withdrawal project to supply up to 19.4 mg/30 days of water to the applicant's distribution system from new Well Nos. 6, 7 and 8, and to retain the existing withdrawal limit of 37 mg/30 days from all wells. The project is located in Mantua Township, Gloucester County, New Jersey.

5. *East Penn Manufacturing Co. D–94–36.* A project to upgrade an IWTP currently discharging to an onsite ore pit at the applicant's plant site in Richmond Township, Berks County, Pennsylvania. The applicant proposes to construct a new treatment facility to provide 0.15 mgd average monthly capacity and construct a new outfall for discharge to Sacony Creek in Maxatawny Township. The IWTP will continue to serve the applicant's lead-acid automotive and industrial battery and battery products manufacturing facility, located approximately 15 miles north of Reading near the intersection of Fleetwood-Lyons and Deka Roads.

6. *Town of Georgetown D–94–37 CP.* An application for approval of a ground water withdrawal project to supply up to 8.64 mg/30 days of water to the applicant's distribution system from new Well No. 1A, and to increase the existing withdrawal limit of 8.1 mg/30 days from all Delaware River Basin

wells to 24.8 mg/30 days. The project is located in the Town of Georgetown, Sussex County, Delaware.

7. *Broad Acres, Inc. D–94–52.* An application for approval of a ground water withdrawal project to supply up to 48.85 mg/30 days of water to the applicant's agricultural irrigation system from new Well Nos. 5 and 6, and to increase the existing withdrawal limit of 73.52 mg/30 days from all wells to 135.7 mg/30 days. The project is located in Kent County, Delaware.

8. *Lyons Borough Municipal Authority D–94–80 CP.* A project to construct a 0.15 mgd municipal sewage treatment plant (STP) to serve the Borough of Lyons and provide a sanitary connection from East Penn Manufacturing Company in Richmond Township, both in Berks County, Pennsylvania. The project STP will be located on the north side of Hunter Street in the Borough of Lyons and will discharge to Sacony Creek in Maxatawny Township, just south of the Conrail Railroad bridge. The STP will provide secondary biological treatment with the extended aeration activated sludge process.

9. *Sealed Air Corporation D–94–81.* An application for approval of a ground water withdrawal project to supply up to 8 mg/30 days of water to the applicant's paper mill from new Well Nos. PW–1 and PW–2, and to limit the withdrawal from all wells to 8 mg/30 days. The project is located in the City of Reading, Berks County, Pennsylvania.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: January 9, 1995.

Susan M. Weisman,

Secretary.

[FR Doc. 95–1276 Filed 1–18–95; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

National Board of the Fund for the Improvement of Postsecondary Education; Meeting

AGENCY: National Board of the Fund for the Improvement of Postsecondary Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES: Time: February 3, 1995 from 11:00 a.m. to 1:30 p.m.

ADDRESSES: Spelman College, Manley Conference Center, 350 Spelman Lane. S.W., Atlanta, GA 20215.

FOR FURTHER INFORMATION CONTACT: Charles Karelis, Director, Fund for the Improvement of Postsecondary Education, 7th & D Streets, S.W., Washington, D.C. 20202. Telephone: (202) 708–5750.

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education (National Board) is established under Section 1003 of the Higher Education Act of 1965, as amended (20 U.S.C. 1135a–1). The National Board of the Fund is authorized to recommend to the Director of the Fund and the Assistant Secretary for Postsecondary Education priorities for funding and approval or disapproval of grants submitted to the Fund.

On February 3, 1995 from 11:00 a.m to 1:30 p.m., the Board will meet in open session. The proposed agenda for the open portion of the meeting will include a review of FIPSE's operating principles, FIPSE's reauthorization and budget, an overview of the Comprehensive Program, Community Service Program, and an orientation for new Board members.

Records are kept of all Board proceedings, and are available for public inspection at the Office of the Fund for the Improvement of Postsecondary Education, Room 3100, Regional Office Building #3, 7th & D Streets, W.S., Washington, D.C. 20202 from the hours of 8:00 a.m. to 4:30 p.m.

Dated: January 12, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–1354 Filed 1–18–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Invention Available for License

AGENCY: Office of General Counsel, DOE.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy hereby announces that U.S. Patent No. 4,953,191, entitled ''High Intensity X-Ray Source Using Liquid Gallium Target,'' is available for license, in accordance with 35 U.S.C. 207–209. A copy of the patent may be obtained, for a modest fee, from the U.S. Patent and Trademark Office, Washington, D.C. 20231.

FOR FURTHER INFORMATION CONTACT: Robert J. Marchick, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585; Telephone (202) 586–2802.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 207 authorizes licensing of Government-owned inventions. Implementing regulations are contained in 37 CFR part 404. 37 CFR 404.7(a)(1) authorizes exclusive licensing of Government-owned inventions under certain circumstances, provided that notice of the invention's availability for license has been announced in the Federal Register.

Issued in Washington, D.C., on December 19, 1994.

Robert R. Nordhaus,

General Counsel.

[FR Doc. 95–1357 Filed 1–18–95; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. EG95–14–000, et al.]

Coulonge Power & Company, Limited, et al.; Electric Rate and Corporate Regulation Filings

January 10, 1995.

Take notice that the following filings have been made with the Commission:

1. Coulonge Power and Company, Limited

[Docket No. EG95–14–000]

On December 13, 1994, Coulonge Power and Company, Limited (the ''Applicant''), a Québec limited partnership with its principal place of business at 1 Rochon Road, Waltham, Québec, Province of Québec, Canada, filed with the Federal Energy Regulatory Commission (the ''Commission'') an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

The Applicant is engaged exclusively in the business of owning and operating a hydro-electric power station on the Coulonge River in the Province of Québec, Canada, with a capacity of approximately 16.2 MW (the ''Facility'').

All of the Facility's electricity is and will continue to be sold at wholesale, pursuant to a long term power sales agreement (25 years, with a renewable term of an additional 25 years), to Hydro-Québec, a public utility owned by the Government of the Province of Québec, Canada.

Comment date: January 31, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Zhuang He Power Partners Limited Partnership

[Docket No. EG95–23–000]

On January 5, 1995, Zhuang He Power Partners Limited Partnership (''Applicant''), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. Applicant states that it is a Delaware limited partnership formed to acquire indirect ownership interests in two proposed approximately 600 MW coal-fired electric generating facilities to be located in the People's Republic of China and/or operate such facilities and to engage in project development activities with respect thereto.

Comment date: January 30, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. EI Power (China), Inc.

[Docket No. EG95–24–000]

On January 5, 1995, EI Power (China) Inc. (''Applicant''), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant is a Delaware corporation formed to engage in project development activities associated with the direct or indirect acquisition of ownership interests in one or more eligible facilities and/or EWGs in the People's Republic of China (''PRC''). Applicant states that these development activities will be limited to activities associated with the acquisition of ownership interests in facilities or entities that meet the criteria for eligible facilities and/or EWGs set out in Section 32 of the Public Utility Holding Company Act of 1935.

Comment date: January 30, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. China Power Partners Limited Partnership

[Docket No. EG95–25–000]

On January 5, 1995, China Power Partners Limited Partnership (''Applicant''), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant states that it is a Delaware limited partnership formed to engage in project development activities associated with the direct or indirect acquisition of ownership interests in one or more eligible facilities and/or EWGs in the People's Republic of China (''PRC''). These development activities will be limited to activities associated with the acquisition of ownership interests in facilities or entities that meet the criteria for eligible facilities and/or EWGs set out in Section 32 of the Public Utility Holding Company Act of 1935.

Comment date: January 30, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. EI Power (China) III, Inc.

[Docket No. EG95–26–000]

On January 5, 1995, EI Power (China) III, Inc. (''Applicant''), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

According to its application, Applicant is a Delaware corporation formed to acquire an indirect ownership interest in two proposed approximately 600 MW coal-fired electric generating facilities to be located in the People's Republic of China and/or operate such facilities and to engage in project development activities with respect thereto.

Comment date: January 30, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Central Illinois Light Company

[Docket No. ER94–1566–000]

Take notice that Central Illinois Light Company (CILCO), on January 5, 1995, tendered for filing with the Commission substitute pages to the contract amendment to the Service Schedules contained in CILCO's Interconnection Agreement with Central Illinois Public Service Company (CILCO Rate Schedule FERC No. 26). These substitute pages have been filed for the purpose of reflecting maximum prices for certain service schedules.

CILCO proposes the revised rate schedule changes to be effective on October 16, 1994.

Copies of the filing were served on the Illinois Commerce Commission.

Comment date: January 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Industrial Gas & Electric Company

[Docket No. ER95–257–000]

Take notice that on December 27, 1994, Industrial Gas & Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: January 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Puget Sound Power & Light Company

[Docket No. ER95–331–000]

Take notice that on December 23, 1994, Puget Sound Power & Light Company (Puget), tendered for filing its service agreement (Service Agreement) with Associated Power Services, Inc. (APS). A copy of the filing was served upon APS.

The Service Agreement is for the purchase and sale of non-firm surplus thermal or purchased energy pursuant to Puget's FPC Electric Tariff Original Volume No. 3.

Comment date: January 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Southern California Edison Company

[Docket No. ER95–332–000]

Take notice that on December 23, 1994, Southern California Edison Company (Edison), tendered for filing the following Supplemental Agreement (Supplemental Agreement), to the 1990 Integrated Operations Agreement (IOA) with the City of Anaheim (Anaheim), FERC Rate Schedule No. 246, and associated Firm Transmission Service Agreement (FTS Agreement):

Supplemental Agreement Between Southern California Edison Company And City of Anaheim, 40 Megawatt Deseret Power Sale Agreement

Edison—Anaheim, 40 Megawatt Deseret, Firm Transmission Service Agreement Between Southern California Edison Company And City of Anaheim

The Supplemental Agreement and FTS Agreement set forth the terms and

conditions by which Edison will integrate and provide firm transmission service for Anaheim's Deseret resource. Edison seeks waiver of the 60 day prior notice requirements and requests the Commission to assign to the agreements an effective date of January 1, 1995.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: January 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service Company

[Docket No. ER95–350–000]

Take notice that on December 23, 1994, Northeast Utilities Service Company, on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, and Holyoke Power and Electric Company (collectively, the Companies,) filed the Companies' plan for refunding to their wholesale customers credits associated with Spent Nuclear Fuel Disposal Costs (SNFDC) received from the United States Department of Energy (DOE).

The Companies request exemption from Section 35.14 of the Commission's Regulation under the Federal Power Act (18 CFR 35.14), to the extent necessary, to calculate and make these refunds based on their wholesale customers' energy purchases during the past overcharge period. The Companies also request exemption from Section 35.19a in order to avoid paying more in interest than the interest received from DOE for the time DOE held these overpayments.

The Companies state that a copy of the filing was sent to the public utility commissions of Connecticut, New Hampshire and Massachusetts and the following affected wholesale customers:

Unit Entitlement Wholesale Customers:

Boston Edison Company
Canal Electric Company
Commonwealth Electric Company
Connecticut Municipal Electric Company
Fitchburg Gas & Electric
Massachusetts Municipal Wholesale Electric Company
Montaup Electric Company
New England Power Company
Newport Electric Corporation
Public Service Company of New Hampshire
United Illuminating Company
Unitil Power Corporation

CL&P Cost of Service Wholesale Customers:

Bozrah Light & Power Company
Norwalk, Second District
Norwalk, Third Taxing
Town of Wallingford

WMECO Cost of Service Wholesale:

Chester Municipal Electric Light Department
R.H. Fletcher Company
Massachusetts Electric Company
New York State Electric & Gas
Russell Municipal Electric Department
Westfield Gas & Electric Department

HWP Cost of Service Wholesale:

Chicopee Municipal Light Plant

HPE Cost of Service Wholesale:

South Hadley Electric Light Department
Westfield Gas & Electric Department

Comment date: January 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Gulf Power Company

[Docket No. ER95–351–000]

Take notice that on December 22, 1994, Gulf Power Company tendered for filing an amendment to the Transmission Service Agreement between Gulf Power Company and Bay Resource Management, Inc. The purpose of this filing is to declare changes in practice and amend the energy rate contained in the foregoing agreement to reflect the energy-related costs incurred by Gulf Power Company to ensure compliance with the Phase I sulfur dioxide emissions limitations of the Clean Air Act Amendment of 1990.

Comment date: January 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Gulf Power Company

[Docket No. ER95–352–000]

Take notice that on December 22, 1994, Gulf Power Company tendered for filing an amendment to the Interconnection Agreement between Gulf Power Company and Alabama Electric Cooperative, Inc. The purpose of this filing is to declare changes in practice and amend energy rates contained in the foregoing agreement to reflect the energy-related costs incurred by Gulf Power Company to ensure compliance with the Phase I sulfur dioxide emissions limitations of the Clean Air Act Amendment of 1990.

Comment date: January 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Southern California Edison Company

[Docket No. ER95–354–000]

Take notice that on December 29, 1994, Southern California Edison Company (Edison), tendered for filing the following Firm Transmission Service Agreement (FTS Agreement):

Edison—Vernon Eldorado-City Gate, Firm Transmission Service Agreement Between Southern California Edison Company And City of Vernon

The FTS Agreement sets forth the terms and conditions under which Edison shall provide firm transmission service between Eldorado Substation and the city limits of Vernon for the period January 1, 1995 through April 30, 1996. The amount of firm transmission service for Vernon to be provided by Edison, pursuant to the FTS Agreement, is 20 MW during the months of May 1995 through October 1995 and 35 MW for the other months during the term of the FTS Agreement. Edison seeks waiver of the 60 day prior notice requirements and requests the Commission to assign to the FTS Agreement an effective date of January 1, 1995.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: January 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Northeast Utilities Service Company

[Docket No. ER95–355–000]

Take notice that on December 29, 1994, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement to provide non-firm transmission service to Commonwealth Electric Company (CES) under the NU System Companies' Transmission Service Tariff No. 2.

NUSCO states that a copy of this filing has been mailed to CES.

NUSCO requests that the Service Agreement become effective sixty (60) days after receipt of this filing by the Commission.

Comment date: January 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Northeast Utilities Service Company

[Docket No. ER95–356–000]

Take notice that on December 29, 1994, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with Hudson Light and Power Department (Hudson) under the NU System Companies System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to Hudson.

NUSCO requests that the Service Agreement become effective on January 1, 1995.

Comment date: January 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Northeast Utilities Service Company

[Docket No. ER95–357–000]

Take notice that on December 29, 1994, Northeast Utilities Service Company (NUSCO), tendered for filing on behalf of The Connecticut Light and Power Company (CL&P), Western

Massachusetts Electric Company (WMECO), Holyoke Water Power Company (HWP), Holyoke Power and Electric Company and Public Service Company of New Hampshire (together, the NU System Companies) a Tariff No. 1 Firm Transmission Service Agreement and a Distribution Service Agreement (Agreements) with Fitchburg Gas and Electric Light Company (Fitchburg). The Agreements provide for delivery of Fitchburg's purchase of the output of the Harris Energy and Realty Corporation's hydro facility across the HWP distribution system and the NU System Companies' transmission facilities and will supersede service now provided to Fitchburg under FERC Rate Schedule Nos. CL&P–274, WMECO–208, and HWP–33.

NUSCO requests that the Agreements be permitted to become effective January 1, 1995. NUSCO states that a copy of the filing has been mailed or delivered to the affected parties.

Comment date: January 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. PECO Energy Company

[Docket No. ER95–358–000]

Take notice that on December 29, 1994, PECO Energy Company (PECO), tendered for filing an Agreement between PECO and Dayton Power & Light Company (DPL), dated December 21, 1994.

PECO states that the Agreement sets forth the terms and conditions for the sale of system energy which it expects to have available for sale from time to time and the purchase of which will be economically advantageous to DPL. In order to optimize the economic advantage to both PECO and DPL, PECO requests that the Commission waive its customary notice period and permit the agreement to become effective on January 1, 1995.

PECO states that a copy of this filing has been sent to DPL and will be furnished to the Pennsylvania Public Utility Commission.

Comment date: January 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. PECO Energy Company

[Docket No. ER95–360–000]

Take notice that on December 30, 1994, PECO Energy Company (PECO), tendered for filing an Agreement between PECO and Long Island Lighting company (LILCO) dated December 9, 1994.

PECO states that the Agreement sets forth the terms and conditions for the sale of system energy which it expects to have available for sale from time to time and the purchase of which will be economically advantageous to LILCO. The Agreement supersedes an agreement between PECO and LILCO dated December 22, 1992, which is on file with the Commission as PECO's Rate Schedule FERC No. 65. In order to optimize the economic advantage to both PECO and LILCO, PECO requests that the Commission waive its customary notice period and permit the agreement to become effective on January 1, 1995.

PECO states that a copy of this filing has been sent to LILCO and will be furnished to the Pennsylvania Public Utility Commission.

Comment date: January 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Southern California Edison Company

[Docket No. ER95–361–000]

Take notice that on December 30, 1994, Southern California Edison Company (Edison), tendered for filing the following agreement between Edison and the City of Colton:

Added Facilities Agreement Between the City of Colton and Southern California Edison Company

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: January 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Stand Energy Corporation

[Docket No. ER95–362–000]

Take notice that on December 30, 1994, Stand Energy Corporation (Stand Energy), tendered for filing pursuant to Rules 205 and 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.205 and 385.207) an application seeking a disclaimer of jurisdiction over certain proposed electric power brokering transactions, the assertion of jurisdiction over certain marketing activities, subject to the outcome of other Commission proceedings, and the issuance of blanket approvals and waivers which would allow Stand Energy to engage in the proposed wholesale electric power transactions. If approved, Stand Energy's proposed Rate Schedule No. 1 would be effective from and after March 1, 1995.

Stand Energy intends to engage in electric power and energy transactions as either a broker or as a marketer. Stand Energy's power marketing activities will include purchases of capacity, energy, and/or transmission services from electric utilities, qualifying facilities, and independent power producers. Stand Energy will resell such power to other purchasers on an arms-length basis and at mutually agreed upon rates. Stand Energy is not in the business of producing or transmitting electric power and does not have title to any electric power generation or transmission facilities.

Comment date: January 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Public Service Company of New Mexico

[Docket No. ER95–364–000]

Take notice that on December 30, 1994, Public Service Company of New Mexico (PNM), tendered for filing Modification Number 5 to the expiring Contract for Electric Service, Contract No. DE-AC04–85AL27436 (Electric Service Agreement), between PNM and the United States Department of Energy (DOE). Under Modification Number 5 to the Electric Service Agreement, PNM agrees to continue in effect those services presently provided to DOE and the Incorporated County of Los Alamos (County) pursuant to the Electric Service Agreement (PNM Rate Schedule FERC No. 61), which services would otherwise terminate on December 31, 1994. Such Modification Number 5 extends the Electric Service Agreement for a period of one year from the current termination date.

PNM requests a waiver of the Commission's notice requirements to permit Modification Number 5 to be effective for service on and after January 1, 1995.

Copies of the Notice have been mailed to the DOE, the County and the New Mexico Public Utility Commission.

Comment date: January 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. PECO Energy Company

[Docket No. ER95–365–000]

Take notice that on December 30, 1994, PECO Energy Company (PECO), tendered for filing an Agreement between PECO and Public Service Electric and Gas Company (PS) dated December 28, 1994.

PECO states that the Agreement sets forth the terms and conditions for the sale of system energy which it expects to have available for sale from time to time and the purchase of which will be economically advantageous to PS. The Agreement supersedes an agreement between PECO and PS dated August 23, 1993, which is on file with the Commission as PECO's Rate Schedule

FERC No. 70. In order to optimize the economic advantage to both PECO and PS, PECO requests that the Commission waive its customary notice period and permit the agreement to become effective on January 1, 1995.

PECO states that a copy of this filing has been sent to PS and will be furnished to the Pennsylvania Public Utility Commission.

Comment date: January 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. Altresco-Pittsfield, L.P.

[Docket No. QF88–21–005]

On December 30, 1994, Altresco-Pittsfield, L.P. (Applicant) submitted for filing an amendment to its filing in this docket.

The amendment provides additional information pertaining to the ownership of its cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: January 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. Morro Energy L.P., S.E.

[Docket Nos. QF95–121–000]

On December 28, 1994, Morro Energy L.P., S.E. (Applicant), c/o NP Morro Inc., General Partner of 2101 Webster Street, Suite 1700, Oakland, California 94612–3049, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the Applicant, the facility is located at #28, KM2 Luchetti Industry Park, Bayamo'n, Puerto Rico 00961, and will consist of two circulating fluidized bed boilers and a condensing steam turbine generator. The maximum net electric power production capacity of the facility will be 235 MW. The primary energy sources will be pitch and petroleum coke, by-products of an oil refining process. Construction of the facility is expected to begin in late 1996.

Comment date: January 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–1237 Filed 1–18–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EG95–19–000, et al.]

LG&E-Westmoreland Hopewell, et al.; Electric Rate and Corporate Regulation Filings

January 12, 1995.

Take notice that the following filings have been made with the Commission:

1. LG&E/Westmoreland Hopewell

[Docket No. EG95–19–000]

On January 3, 1995, LG&E-Westmoreland Hopewell (''Hopewell''), a California general partnership with its principal place of business at 12500 Fair Lakes Circle, Suite 350, Fairfax, Virginia 22033–3804, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Hopewell is engaged directly and exclusively in the business of owning or operating, or both owning and operating, a coal-fired cogeneration facility with a maximum net power production capacity of 62.7 MW which is an eligible facility. All of the facility's electric power net of the facility's operating electric power is or will be purchased at wholesale by Virginia Electric & Power Company. Steam from the cogeneration facility, which is a by-product of electric generation, may be sold incidental to the sale of electric power at wholesale.

Comment date: January 30, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. LG&E-Westmoreland Southampton

[Docket No. EG95–20–000]

On January 3, 1995, LG&E-Westmoreland Southampton (''Southampton''), a California general partnership with its principal place of business at 12500 Fair Lakes Circle, Suite 350 Fairfax, Virginia 22033–3804, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Southampton is engaged directly and exclusively in the business of owning or operating, or both owning and operating, a coal-fired cogeneration facility with a maximum net power production capacity of 62.64 MW which is an eligible facility. All of the facility's electric power net of the facility's operating electric power is or will be purchased at wholesale by Virginia Electric & Power Company. Steam from the cogeneration facility, which is a by-product of electric generation, and tall oil, a supplementary fuel, may be sold incidental to the sale of electric power at wholesale.

Comment date: January 30, 1995, in accordance with Standard Paragraph E at the end of this notice. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. LG&E-Westmoreland Altavista

[Docket No. EG95–21–000]

On January 3, 1995, LG&E-Westmoreland Altavista (''Altavista''), a California general partnership with its principal place of business at 12500 Fair Lakes Circle, Suite 350, Fairfax, Virginia 22033–3804 filed with the Federal Energy Regulatory Commission an application for determination or exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Altavista is engaged directly and exclusively in the business of owning or operating, or both owning and operating, a coal-fired cogeneration facility with a maximum net power production capacity of 62.7 MW which is an eligible facility. All of the facility's electric power net of the facility's operating electric power is or will be purchased at wholesale by Virginia Electric & Power Company. Steam from the cogeneration facility, which is a by-product of electric generation, and wood may be sold incidental to the sale of electric power at wholesale.

Comment date: January 30, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. LG&E-Westmoreland Rensselaer

[Docket No. EG95–22–000]

On January 3, 1995, LG&E-Westmoreland Rensselaer

(''Rensselaer''), a California general partnership, with its principal place of business at 12500 Fair Lakes Circle, Suite 350, Fairfax, Virginia 22033–3804, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Rensselaer is engaged indirectly, through one or more affiliates, and exclusively in the business of owning or operating, or both owning and operating, a gas-fired cogeneration facility with a maximum net power production capacity of 79 MW which is an eligible facility. All of the facility's electric power net of the facility's operating electric power is or will be purchased at wholesale by Niagara Mohawk Power Corporation. Steam from the cogeneration facility, which is a by-product of electric generation, and natural gas supplies and transportation services, which were contracted for based on the facility's expected fuel supply requirements, may be sold or reassigned incidental to the sale of electric power at wholesale.

Comment date: January 30, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Boston Edison Company

[Docket No. ER94–1135–000]

Take notice that on December 21, 1994, Boston Edison Company (Edison) tendered for filing an amendment to the Transmission Facilities Support Agreement between Edison and New England Power Company (NEP), dated May 25, 1988. The purpose of the amendment is to adjust the return on equity provision of the facilities Support Agreement.

Edison states that it has served the filing on NEP and on the Massachusetts Department of Public Utilities.

Edison requests that the amendment become effective on January 7, 1995.

Comment date: January 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Puget Sound Power & Light Company

[Docket No. ER94–1506–000]

Take notice that Puget Sound Power & Light Company on January 5, 1995, tendered for filing an amendment in the above-referenced docket.

Comment date: January 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Louisville Gas and Electric Company

[Docket No. ER95–50–000]

Take notice that on December 30, 1994, Louisville Gas and Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: January 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Minnesota Power & Light Company

[Docket No. ER95–163–000]

Take notice that on December 8, 1994, Minnesota Power & Light Company tendered for filing amendments to its November 4, 1994 filing in the above referenced docket.

Comment date: January 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Robbins Resource Recovery Partnership, L.P.

[Docket No. ER95–307–000]

Take notice that on December 20, 1994, Robbins Resource Recovery tendered for filing a Notice of Succession in FERC Rate Schedule No. 1.

Comment date: January 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Arizona Public Service Company

[Docker No. ER95–359–000]

Take notice that on December 29, 1994, Arizona Public Service Company (APS) tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 165 between APS and San Diego Gas & Electric Company.

Comment date: January 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Arkansas Power & Light Company

[Docket No. ER95–363–000]

Take notice that on December 30, 1994, Arkansas Power & Light Company tendered for filing revisions to the rate formulas contained in the agreements with the City of Conway, West Memphis Osceola, Jonesboro and Hope, Arkansas and the Cities of Campbell and Thayer, Missouri.

Comment date: January 26, 1995 in accordance with Standard Paragraph E at the end of this notice.

12. Century Power Corporation

[Docket No. ER95–367–000]

Take notice that on December 30, 1994, Century Power Corporation (Century Power) tendered for filing a Notice of Cancellation of the following Rate Schedules:

Rate Schedule FERC No. 1
Rate Schedule FERC No. 2
Rate Schedule FERC No. 7
Rate Schedule FERC No. 10
Rate Schedule FERC No. 11
Rate Schedule FERC No. 12
Rate Schedule FERC No. 13
Rate Schedule FERC No. 14
Rate Schedule FERC No. 15
Rate Schedule FERC No. 18

Comment date: January 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Peak Energy, Inc.

[Docket No. ER95–379–000]

Take notice that on January 3, 1995, Peak Energy, Inc. (Peak), tendered for filing a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective February 27, 1995.

Peak intends to engage in electric power and energy transactions as marketer and a broker. In transactions where Peak sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Neither Peak nor any of its affiliates are in the business of generating, transmitting, or distributing electric power. Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: January 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. UtiliCorp. United Inc.

[Docket No. ES95–19–000]

Take notice that on January 6, 1995, UtiliCorp United Inc. (UtiliCorp), filed an application under § 204 of the Federal Power Act seeking authorization to enter into a loan purchase agreement and to provide a corporate guaranty in an amount not to exceed $112.5 million to guarantee payment by UtiliCorp South Pacific, Inc. (USP), on a three to five year line of credit. Also, UtiliCorp requests a waiver of the competitive bidding and negotiated placement requirements. USP is a wholly-owned subsidiary of UtiliCorp.

Comment date: February 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Scott Paper Company

[Docket No. QF86–557–001]

On December 30, 1994, Scott Paper Company of Scott Plaza One, Philadelphia, Pennsylvania, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to Section

292.207(b) of the Commission's Regulations and Section 3(17)(E) of the Federal Power Act. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the small power production facility, which is located in Chester, Pennsylvania, consists of a fluidized bed boiler and a steam turbine generator. The maximum net electric power production capacity of the facility will now be approximately 52 MW. The primary energy source of the facility will now be waste in the form of petroleum coke and anthracite culm. In Docket No. QF86–557–000, the facility was granted certification as a cogeneration facility with a power production capacity of 55.2 MW. Thermal energy from the facility was to be used for paper drying purposes [35 FERC ¶ 62,326 (1986)].

Comment date: February 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Prairie Wind Energy Partners, L.P.

[Docket No. QF95–198–000]

On December 30, 1994, Prairie Wind Energy Partners, L.P. (Applicant), c/o Prairie Wind Energy, Inc., 1221 Nicollet Mall, Suite 700, Minneapolis, MN 55403, submitted for filing an application for certification of a facility as a small power production facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the small power production facility will be located at Buffalo Ridge near Lake Benton, Minnesota, and will consist of approximately 167 turbines, a 34.5 Kv switchyard and related interconnection equipment. The maximum net power production capacity of the facility will be approximately 80 MW. The primary energy source will be wind. The installation of the facility is scheduled to begin in late 1995.

Comment date: February 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–1297 Filed 1–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–72–000, et al.]

Power Exchange Corp., et al.; Electric Rate and Corporate Regulation Filings

January 11, 1995.

Take notice that the following filings have been made with the Commission:

1. Power Exchange Corp.

[Docket No. ER95–72–000]

Take notice that on December 20, 1994, Power Exchange Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: January 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Kimball Power Co.

[Docket No. ER95–232–000]

Take notice that on December 21, 1994, Kimball Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: January 24, 1995, in accordance with Standard paragraph E at the end of this notice.

3. Public Service Co. of New Hampshire

[Docket No. ER95–366–000]

Take notice that on December 30, 1994, Public Service Company of New Hampshire (PSNH), tendered for filing materials to reduce rates under the Total Requirements Resale Service Agreement between PSNH and Citizens Utilities Company (Citizens). PSNH has requested an effective date for the rate reduction of November 1, 1994.

PSNH states that rate reduction relates to reduced charges for post-retirement benefits other than pensions. PSNH further states that a copy of the filing was served on Citizens.

Comment date: January 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Company of New Mexico

[Docket No. ER95–368–000]

Take notice that on December 30, 1994, Public Service Company of New Mexico (PNM), tendered for filing a Notice of Continuation of Service Under Expiring Hazard Sharing Agreement (the Notice). Under the Notice, PNM agrees to continue in effect, on a month-to-month basis (terminable subject to the requirements of Section 35.15 of the Commission's Rules and Regulations, 18 CFR 35.15), by either party upon three (3) months notice, those hazard sharing services presently provided to Plains Electric Generation and Transmission Cooperative, Inc. (Plains) pursuant to Service Schedule J to the PNM/Plains Master Interconnection Agreement (Supplement 36 to PNM Rate Schedule FPC No. 31), which services would otherwise terminate on January 1, 1995.

PNM requests a waiver of the Commission's notice requirements to permit the Notice to be effective for service rendered on and after January 2, 1995.

Copies of the Notice have been mailed to Plains and the New Mexico Public Utility Commission.

Comment date: January 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of New Hampshire

[Docket No. ER95–369–000]

Take notice that on December 30, 1994, Public Service Company of New Hampshire (PNSH), tendered for filing changes to rates and amendments (the Amendments) to rate schedules with each of its following wholesale requirements customers (the Customers); The Town of Ashland, New Hampshire (Electric Light Department), and the New Hampshire Electric Cooperative, Inc. (the NHEC). PSNH states that the submitted materials, when permitted to become effective, would decrease two separate components of rates to the Customers, one component reflected in the Amendments and the other to reflect reduced accruals for post-retirement benefits other than pensions (PBOPs). PSNH further states that the component of the rate reduction contained in the Amendments flows through to the Customers the savings that will result from settlements recently reached between PSNH and two New Hampshire independent power producers.

PNSH has requested that the rate reduction for decreased PBOP costs be permitted to become effective November 1, 1994, and that the Amendments be permitted to become effective January 1, 1995. It states that copies of the filing were served on each of the Customers and the New Hampshire Public Utilities Commission, which is the only State Commission within whose jurisdiction

the Customers distribute and sell electric energy at retail.

Comment date: January 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Company of Colorado

[Docket No. ER95–370–000]

Take notice that on December 30, 1994, Public Service Company of Colorado (Public Service), filed the Midway Facilities Service Agreement Between Public Service Company of Colorado and Tri-State Generation and Transmission Association, Inc., dated December 21, 1994 (Midway Facilities Agreement).

Under the Midway Facilities Agreement, Public Service will provide Tri-State Generation and Transmission Association, Inc. (Tri-State), with 55 MW of firm capacity in its Midway Facilities, which consist of its Midway Transmission Substation, including a 100 MVA, 230/115 Kv auto-transformer, and associated 230 Kv and 115 Kv power circuit breakers, switches and bus work. Public Service requests an effective date of April 15, 1992, and requests waiver of the notice requirements, for good cause shown.

Public Service states that copies of the filing were served on Tri-State, its customer, the Colorado Public Utilities Commission, and the Office of Consumer Counsel.

Comment date: January 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Commonwealth Edison Co.

[Docket Nos. ER95–371–000]

Take notice that on December 30, 1994, Commonwealth Edison Company (ComEd), tendered for filing a Firm Transmission Service Tariff FTS–1 and a Network Services Tariff NTS–1. By these Tariffs, ComEd offers to provide firm flexible point-to-point transmission service and network transmission service. The FTS–1 Tariff supersedes in its entirety ComEd's TS–1 Tariff currently on file, subject to refund, and set for hearing in Docket No. ER93–777–000. ComEd asks that this filing be consolidated with Docket No. ER93–777–000.

ComEd asks for an effective date of February 28, 1995, for the FTS–1 and NTS–1 Tariffs. ComEd has served copies of the filing on the Illinois Commerce Commission and all parties to Docket No. ER93–777–000. A copy of the filing is also available for public inspection at ComEd's offices in Chicago, Illinois.

Comment date: January 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Fitchburg Gas and Electric Light Co.

[Docket No. ER95–372–000]

Take notice that on December 30, 1994, Fitchburg Gas and Electric Light Company (Fitchburg), filed a service agreement between Fitchburg and Green Mountain Power Corporation (Green Mountain). The service agreement provides for the sale by Fitchburg of capacity and associated energy. Also submitted is a notice of cancellation for this service agreement. This is a service agreement under Fitchburg's FERC Electric Tariff, Original Volume No. 2, which was accepted for filing in Docket No. ER92–88–000, and is governed by that tariff. Fitchburg requests an effective date of January 1, 1995, and seeks waiver of the Commission's notice requirements for good cause shown.

Fitchburg states that copies of the filing were served on Green Mountain Power and the Massachusetts Department of Public Utilities.

Comment date: January 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Boston Edison Co.

[Docket No. ER95–373–000]

Take notice that on December 30, 1994, Boston Edison Company (Boston Edison), of Boston, Massachusetts, in connection with its adoption of Financial Accounting Standards No. 106 to recognize Postretirement Benefits Other than Pensions (PBOP) on an accrual basis, tendered for filing rate schedule supplements to its following contracts for the sale of power from the Pilgrim nuclear power plant.

Utility	Rate schedule No.	Entitlement (in percent)
Commonwealth Electric Co	68	11.00000
Montaup Electric Co	69	11.00000
Boylston	77	.07463
Holyoke	79	.89552
Westfield	81	.22388
Hudson	83	.37313
Littleton	85	.14925
Marbelhead	87	.14925
North Attleboro	89	.14925
Peabody	91	.22388
Shrewsbury	93	.37313
Templeton	95	.04478
Wakefield	97	.14925
West Boylston	99	.07463
Middleborough	102	.10448
Reading	113	.74627

The supplements ask the Commission for permission (i) to use the 1993 $27,788,000 and 1994 $24,993,000 actuarially determined PBOP costs for purposes of its contract billings in those years; (ii) to use the 1994 cost on an interim basis for 1995 contract year billing until the 1995 actuarial study is available; (iii) to use 1993–1995 phase-in amounts derived from a Boston Edison settlement before the Massachusetts Department of Public Utilities (MDPU); and (iv) to create a regulatory asset to be amortized in future years based on the Pilgrim customers' share of 1993–1995 PBOP costs which is not recovered as an expense or capitalized as part of the cost of plant under construction.

Boston Edison states that it has served the filing on each affected customer and on the MDPU.

Comment date: January 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–1238 Filed 1–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Project 6939–059; West Virginia]

City of Jackson, Ohio and Certain Ohio Municipalities; Notice of Availability of Draft Environmental Assessment

January 12, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR Part 380 (Order 486, 52 F.R. 47897), the Commission's Office of Hydropower Licensing has reviewed a non-capacity related amendment of license for the Belleville Hydroelectric Project, No. 6939–059. The Belleville Hydroelectric Project is located on the Ohio River in Wood county, West Virginia. The application is for the construction of a 138–Kilovolt transmission in Rutland, Ohio. A Draft

Environmental Assessment (DEA) was prepared for the application. The DEA finds that approving the application would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Please submit any comments within 30 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 6939–059 to all comments. For further information, please contact the project manager, Rebecca Martin, at (202) 219–2650.

Lois D. Cashell,

Secretary.

[FR Doc. 95–1296 Filed 1–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–132–000, et al.]

Northwest Pipeline Corp., et al.; Natural Gas Certificate Filings

January 10, 1995.

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corp.

[Docket No. CP95–132–000]

Take notice that on December 22, 1994, Northwest Pipeline Corporation (Northwest), located at 295 Chipeta Way, Salt Lake City, Utah 84108–0900, filed in Docket No. CP95–132–000 an application pursuant to Section 7(b) of the Natural Gas Act. Northwest requests authorization to abandon by sale to Colorado Interstate Gas Company (CIG) an undivided 11.11 percent of Northwest's interest in the Shute Creek pipeline in Wyoming; all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that, presently, both the 17.5 mile, 20-inch Shute Creek pipeline extending from the outlet of Exxon's Shute Creek Plant in Lincoln County, Wyoming to Northwest's Shute Creek Receipt Meter Station near Opal, Wyoming and the Shute Creek Meter Station are owned jointly by Northwest (75%) and ANR Pipeline Company (ANR) (25%). CIG has agreed to acquire 11.11% of Northwest's interest and all of ANR's interest in the pipeline. Northwest's sale to CIG will be at Northwest's net book value as of the closing date. As of October 31, 1994 the net book value of the subject 11.11% interest is approximately $320,000. Upon completion of its acquisitions from Northwest and ANR, CIG will own an undivided one-third interest in the Shute Creek pipeline and both CIG and Northwest will have the right to use up to the entire capacity of the Shute Creek pipeline (initially approximately 260 MMcf per day) under the terms of the Shute Creek Hub Ownership Agreement. CIG will construct and operate a new meter station under its Part 157 blanket certificate to receive gas from the Shute Creek Hub into its adjacent King Lateral at Opal.

Comment date: January 31, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. ANR Pipeline Co.

[Docket No. CP95–133–000]

Take notice that on December 22, 1994, ANR Pipeline Company (ANR), located at 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP95–133–000 an application pursuant to Section 7(b) of the Natural Gas Act. ANR requests authorization to abandon by sale to Colorado Interstate Gas Company (CIG) its 25 percent interest in the Shute Creek residue pipeline in Lincoln County, Wyoming. Additionally, ANR requests authorization to abandon by sale its interest in the associated metering facilities to Northwest Pipeline Company (Northwest), all as more fully set forth in the request that is on file with the Commission and open to public inspection.

ANR states that, presently, both the 17.5 mile, 20-inch Shute Creek residue pipeline and the metering facilities are owned jointly by Northwest (75%) and ANR (25%). ANR's sale of the facilities will be at net book value as of the closing date.

Comment date: January 31, 1995, in accordance with Standard Paragraph F at the end of this notice.

3. Southern Natural Gas Co.

[Docket No. CP95–134–000]

Take notice that on December 23, 1994, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP95–134–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a delivery point for service to Alabama Gas Corporation (Alagasco), under Southern's blanket certificate issued in Docket No. CP82–406–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern proposes to construct and operate a delivery point, including measurement and appurtenant facilities, to provide transportation service to Alagasco who will then provide natural gas service to a Briggs and Stratton Company manufacturing plant and other commercial and residential customers in Lee County, Alabama. Southern states that the facilities will be located at or near Mile Post 164.4 on its 10-inch Montgomery-Columbus Line. The estimated project cost is $168,700.

Accordingly, Southern will transport gas for Alagasco under its existing Service Agreements to Southern's FT and IT Rate Schedules. Alagasco intends to assign a Maximum Daily Delivery Quantity of 2,000 Mcf per day for the new delivery point. To allow for this new assignment, Alagasco will reduce its Maximum Daily Delivery Quantity at its Montgomery Area delivery point by 2,000 Mcf per day. The additional delivery point won't require Alagasco to add more transportation demand to its firm service. Southern has stated that the installation of the proposed facilities will have no adverse effect on its ability to provide its firm deliveries.

Comment date: February 24, 1995, in accordance with Standard paragraph G at the end of this notice.

4. Ozark Gas Transmission System

[Docket No. CP95–147–000]

Take notice that on January 5, 1995, Ozark Gas Transmission System (Ozark), 1700 Pacific Avenue, Dallas, Texas 75201, filed in Docket No. CP95–147–000 an application pursuant to Section 7(b) of the Natural Gas Act, for permission and approval to abandon three lateral compressors and related facilities, located at Ozark's Stephens McBride Compressor Station in Sebastian County, Arkansas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Ozark is proposing to abandon three of the four compressor units at its Stephens McBride Compressor Station, specifically Units No. 34014, 34016, and 34017, because there has been a significant drop in volumes at the Stephen McBride Compressor Station. Ozark will continue to provide service at this station by retaining one existing unit, which has exhibited the capacity

to adequately compress the throughout experienced at that station for the past twelve months. Ozark was authorized in Docket No. CP78–532, *et al.*, inter alia, to construct and operate the Stephens McBride Compressor Station. Ozark further states that it proposes to reclassify the facilities proposed to be abandoned herein, for future use.

Comment date: January 31, 1995, in accordance with Standard paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–1239 Filed 1–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–143–000, et al.]

Southern Natural Gas Co., et al.; Natural Gas Certificate Filings

January 11, 1995.

Take notice that the following filings have been made with the Commission:

1. Southern Natural Gas Co.

[Docket No. CP95–143–000]

Take notice that on January 4, 1995, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP95–143–000 an application pursuant to Section 7 (b) and (c) of the Natural Gas Act for permission and approval to abandon approximately 3.0 miles of its existing 4-inch Graniteville Line along with its existing Graniteville Meter Station and submeasurement station and for a certificate of public convenience and necessity authorizing the construction and operation of approximately 3.5 miles of a new 8-inch Graniteville Line replacement pipeline with a new regulator station and a new meter station located in Aiken County, South Carolina in order to provide additional firm transportation service to Graniteville Company (Graniteville), an existing industrial customer, at its plant located in Graniteville, South Carolina, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to replace its existing 4-inch Graniteville Line with a new 8-inch Graniteville Line extending approximately 3.5 miles northwesterly from approximately Mile Post 501 on Southern's South Main Lines in Aiken County, South Carolina to a new dual 4-inch meter station at Graniteville's plant. Southern also proposes to install a new regulator station at approximately milepost 2.6 on the new 8-inch Graniteville Line. Southern states that the new 8-inch Graniteville Line would follow the existing 4-inch pipeline for approximately 0.9 miles, but would traverse a separate route for approximately 2.6 miles in order to avoid congested areas.

Southern proposes to abandon, in place, approximately 3.0 miles of its approximately 3.5 miles existing 4-inch Graniteville Line. Southern states that approximately 0.5 miles of the 4-inch pipeline between mileposts 2.810 and 2.317 would remain in service to continue to serve Southern's three existing customers off taps located on this portion of pipeline which would be tied into the new 8-inch Graniteville Line. Also, Southern proposes to abandon its existing Graniteville meter station which would be replaced by the new duel 4-inch meter station at the plant and to abandon the submeasurement station located at the plant by transfer of ownership to Graniteville for use by Graniteville in its plant operations.

Southern estimates the cost of these facilities to be $2,168,200 which would be financed through the use of short term financing and available cash from operations and ultimately from permanent financing.

Southern proposes to construct the facilities to deliver an additional 3,625 Mcf of natural gas per day on a firm basis to Graniteville. Southern states that it provides firm transportation service to Graniteville pursuant to an existing service agreement between Southern and Texican Natural Gas Company (Texican), a marketer, dated August 21, 1992. Southern states that Southern and Texican have entered into a service agreement dated September 23, 1994, to provide an additional firm transportation service of 3,625 Mcf of natural gas per day for Graniteville for a ten year term under Rate Schedule FT subject to the authorization to install the replacement facilities requested herein.

Comment date: February 1, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. NorAm Gas Transmission Co.

[Docket No. CP95–144–000]

Take notice that on January 4, 1995, as supplemented on January 9, 1995, NorAm Gas Transmission Company (NGT), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP95–144–000, a request pursuant to Sections 157.216, 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.216, 157.205, and 157.211) for authorization to replace and upgrade existing metering facilities in Hempstead County, Arkansas under its blanket

certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

NGT specifically proposes to replace and upgrade existing metering facilities currently serving ARKLA, a distribution division of NorAm Energy Corporation (ARKLA). NGT says it will replace one 1¼-inch AL–425 positive meter and one ⅛-inch regulator orifice and install one 1¼-inch AL–800 positive meter and one 3/16-inch regulator orifice and recorder on NGT's Line A, Section 29, Township 13 South, Range 24 West, Hempstead County, Arkansas for service to ARKLA's existing Rural Extension No. 745, serving both commercial and domestic customers. NGT states the location of the facilities to be abandoned is the same location as the facilities to be installed. NGT explains ARKLA has requested larger measurement facilities to accommodate the addition of commercial operations.

NGT maintains the cost of the metering facilities to be abandoned is $600.00, and the cost of the facilities to be constructed is estimated to be $3,163.00. NGT says ARKLA will reimburse NGT for all construction costs. NGT states the estimated volumes to be delivered through these facilities are approximately 5,600 MMBtu annually and 50 MMBtu on a peak day.

NGT states that it will transport gas to ARKLA and provide service under its Order No. 636 restructured rate scheduled, that the volumes delivered will be within ARKLA's certificated entitlement, and that its tariff does not prohibit the addition of new delivery points. NGT asserts that it has sufficient capacity to accomplish the deliveries without detriment or disadvantage to its other customers.

Comment date: February 27, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Kern River Gas Transmission Co.

[Docket No. CP95–145–000]

Take notice that on January 4, 1995, Kern River Gas Transmission Company (Kern River), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95–145–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct, own, and operate certain tap, metering, and appurtenant facilities for the delivery of gas to Nevada Power Company, located in Clark County, Nevada, under Kern River's blanket certificate issued in Docket No. CP89–2047, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Kern River proposes to construct the Harry Allen Delivery Point consisting of a 12-inch tap and meter station, as well as a 4400-foot long section of 16-inch lateral pipeline from Kern River's mainline to the meter station. The meter station and lateral will have a nominal capacity of 240,000 Mcf/day. Service to Nevada Power will be provided by Kern River under its existing interruptible service agreement, as well as for any of Kern River's other firm or interruptible shippers under the various terms and conditions for those Part 284 transportation rate schedules.

Nevada Power will utilize the natural gas at its proposed Harry Allen Station for electric generation peaking service. The electric generation unit is currently under construction and expected to be placed in service in May 1995.

Comment date: February 27, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 1240 Filed 1–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11287–001 Alaska]

Lace River Hydro; Surrender of Preliminary Permit

January 12, 1995.

Take notice that Lace River Hydro, Permittee for the Lace River Project No. 11287, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11287 was issued November 9, 1992, and would have expired October 31, 1995. The project would have been located on an unnamed lake and creek in the first Judicial District on Prince of Wales Island, Alaska.

The Permittee filed the request on January 4, 1995, and the preliminary permit for Project No. 11287 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR

part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 95–1241 Filed 1–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP89–637–009]

ANR Pipeline Co.; Notice of Application to Amend Certificate

January 12, 1995.

Take notice that on January 9, 1995, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89–637–009 an application pursuant to Section 7(c) of the Natural Gas Act to amend a certificate of public convenience and necessity issued in ANR Pipeline Company [1] (Certificate), all as more fully set forth in the application on file with the Commission and open to public inspection.

In the Certificate, ANR was authorized, among other things, to construct its Sulphur Springs Compressor Station in Henry County, Indiana. The Certificate authorized the installation and operation of 5,400 HP of compression at the Sulphur Springs Station. However, ANR determined that the most economical compressor package bid for this installation is 5,700 HP.

ANR requests that the Certificate be amended to reflect the installation of 5,700 HP of compression instead of the 5,400 HP authorized in the Certificate.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 2, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–1242 Filed 1–18–95; 8:45 am]

BILLING CODE 6717–01–M

[1] 54 FERC ¶ 61,032 (1991).

[Docket No. ER95–218–000]

Koch Power Services, Inc.; Notice of Issuance of Order

January 13, 1995.

On November 25, 1994, Koch Power Services, Inc. (Koch) submitted for filing a rate schedule under which Koch will engage in wholesale electric power and energy transactions as a marketer. Koch also requested waiver of various Commission regulations. In particular, Koch requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Koch.

On January 4, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34 subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Koch should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Koch is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Koch's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 3, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–1298 Filed 1–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–74–000]

Mesquite Energy Services, Inc.; Notice of Issuance of Order

January 13, 1995.

On October 26, 1994 and November 21, 1994, Mesquite Energy Services, Inc. (Mesquite) submitted for filing a rate schedule under which Mesquite will engage in wholesale electric power and energy transactions as a marketer. Mesquite also requested waiver of various Commission regulations. In particular, Mesquite requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Mesquite.

On January 4, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Mesquite should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 north Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Mesquite is authorized to issue securities and assume obligations

or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Mesquite's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 3, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, NE. Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–1299 Filed 1–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–192–000]

National Power Management Company; Notice of Issuance of Order

January 13, 1995.

On November 15, 1994, National Power Management Company (NPMC) submitted for filing a rate schedule under which NPMC will engage in wholesale electric power and energy transactions as a marketer. NPMC also requested waiver of various Commission regulations. In particular, NPMC requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by NPMC.

On January 4, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by NPMC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, NPMC is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of NPMC's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 3, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–1300 Filed 1–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG88–55–006]

Panhandle Eastern Pipe Line Co.; Notice of Filing

January 12, 1995.

Take notice that on January 5, 1995, Panhandle Eastern Pipe Line Company (Panhandle), filed its revised standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566 *et seq.*[2] Panhandle states that it is revising its standards of conduct to incorporate the changes required by Order No. 566–A and the Commission's December 7, 1994 order.[3]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214 (1994)). All such motions to intervene or protest should be filed on or before January 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–1243 Filed 1–18–95; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, order on rehearing, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. ¶ 30,868 (1989); Order No. 497–B, order extending sunset date, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C, order extending sunset date, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497–D, order on remand and extending sunset date, III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, order on rehearing and extending sunset date, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, order denying rehearing and granting clarification, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, order extending sunset date, 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, order on rehearing, 59 FR 52,896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994).

[3] 69 FERC ¶ 61,310 (1994).

Southwest Gas Storage Co.; Notice of Filing

[Docket No. MG91–2–004]

January 12, 1995.

Take notice that on January 5, 1995, Southwest Gas Storage Company (Southwest), filed its revised standards of conduct under Order Nos. 497 *et. seq.*[1] and Order Nos. 566 *et seq.*[2] Southwest states that it is revising its standards of conduct to incorporate the changes required by Order No. 566–A

[1] Order No. 497, 53 FR 22139 (June 14, 1933), III FERC Stats. & Regs.¶ 30,820 (1988); Order No. 497–A, order on rehearing, 54 FR 52781 (December 22, 1989), ¶ 30,868 (1989) III FERC Stats. & Regs. Order No. 497–B, order extending sunset date, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C, order extending sunset date, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas V. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, order on rehearing and extending sunset date, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, order denying rehearing and granting clarification, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, order extending sunset date, 59 FR 32884 (June 27, 19940, III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, order on rehearing, 59 FR 52,896 (October 20, 1994), 69 FERC ¶61,044 (October 14, 1994).

and the Commission's December 7, 1994 order.[3]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214 (1994)). All such motions to intervene or protest should be filed on or before January 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–1244 Filed 1–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG88–26–006]

Texas Eastern Transmission Corp.; Notice of Filing

January 12, 1995.

Take notice that on January 6, 1995, Texas Eastern Transmission Corporation (Texas Eastern), filed its revised standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566 *et seq.*[2] Texas Eastern states that it is revising its standards of conduct to incorporate the changes required by Order No. 566–A and the Commission's December 7, 1994 order.[3]

Texas Eastern states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214 (1994)). All such motions to intervene or protest should be filed on or before January 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–1245 Filed 1–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–62–000]

TexPar Energy, Inc.; Notice of Issuance of Order

January 13, 1995.

On October 24, 1994 and November 10, 1994, TexPar Energy, Inc. (TexPar) submitted for filing a rate schedule under which TexPar will engage in wholesale electric power and energy transactions as a marketer. TexPar also requested waiver of various Commission regulations. In particular, TexPar requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by TexPar.

On December 27, 1994, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by TexPar should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, TexPar is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of TexPar's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 26, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–1301 Filed 1–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–148–000]

Transcontinental Gas Pipe Line Corp.; Notice of Request Under Blanket Authorization

January 12, 1995.

Take notice that on January 10, 1995, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP95–148–000 a request pursuant to Section 157.205 of the Commission's Regulations to construct and operate facilities to expand an existing point of delivery to Public Service Electric & Gas Company (PSE&G) and to abandon an existing 4-inch tap and approximately 300 feet of 4-inch pipeline located in Clifton, Passaic County, New Jersey (Clifton delivery point) under Transco's blanket certificate issued in Docket No. CP82–426–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transco proposes to expand the Clifton delivery point, requested by PSE&G, by removing and retiring the existing 4-inch tap on Transco's Caldwell Loop Line and approximately 300 feet of 4-inch pipeline connecting

[3] 69 FERC ¶61,310 (1994).

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶30,820 (1988); Order No. 497–A, order on rehearing, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, order extending sunset date, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶30,908 (1990); Order No. 497–C, order extending sunset date, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497–D, order on remand and extending sunset date, III FERC Stats. & Regs. ¶30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, order on rehearing and extending sunset date, 59 FR 243 (January 4, 1994), 65 FERC ¶61,381 (December 23, 1993); Order No. 497–F, order denying rehearing and granting clarification, 59 FR 15336 (April 1, 1994), 66 FERC ¶61,347 (March 24, 1994); and Order No. 497–G, order extending sunset date, 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶30,997 (June 17, 1994); Order No. 566–A, order on rehearing, 59 FR 52,896 (October 20, 1994), 69 FERC ¶61,044 (October 14, 1994).

[3] 69 FERC ¶61,310 (1994).

the PSE&G metering facilities; and to construct and operate a new 8-inch tap on Transco's 36-inch Caldwell Loop Line ''B'' at milepost 1831.70 and approximately 300 feet of 8-inch pipeline and a meter station at the existing Clifton delivery point site. Transco states that PSE&G would reimburse Transco for all the cost of these facilities estimated to be $636,532. Transco states that Transco currently delivers up to 10,000 Mcf of natural gas per day (Mcf/d) to PSE&G at the Clifton delivery point and that with the proposed expansion would be able to deliver up to 50,000 Mcf/d on a firm and/or interruptible basis at the Clifton delivery point.

Transco states that it is not proposing to alter the total volumes authorized for delivery to PSE&G. The addition of this delivery point would have no impact on Transco's peak day deliveries and little or no impact on Transco's annual deliveries, and is not prohibited by Transco's tariff.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFT 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–1246 Filed 1–18–95:8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG88–54–005]

Trunkline Gas Co.; Notice of Filing

January 12, 1995.

Take notice that on January 5, 1995, Trunkline Gas Company (Trunkline), filed its revised standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566 *et seq.*[2] Trunkline states that it is revising its standards of conduct to incorporate the changes required by Order No. 566–A and the Commission's December 7, 1994 order.[3]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214 (1994)). All such motions to intervene or protest should be filed on or before January 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–1247 Filed 1–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG90–3–004]

Trunkline LNG Co.; Notice of Filing

January 12, 1995.

Take notice that on January 5, 1995, Trunkline LNG Company (Trunkline LNG) filed its revised standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566 *et seq.*[2] Trunkline LNG states that it is revising its standards of conduct to incorporate the changes required by Order No. 566–A and the Commission's December 7, 1994 order.[3]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214 (1994)). All such motions to intervene or protest should be filed on or before January 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–1248 Filed 1–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–187–000]

Utility-2000 Energy Corp.; Notice of Issuance of Order

January 13, 1995.

On November 14, 1994, Utility-2000 Energy Corp. (Utility-2000) submitted for filing a rate schedule under which Utility-2000 will engage in wholesale electric power and energy transactions as a marketer. Utility-2000 also requested waiver of various Commission regulations. In particular, Utility-2000 requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Utility-2000.

On December 29, 1994, pursuant to delegated authority, the Director,

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, order on rehearing, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, order extending sunset date, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C order extending sunset date, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497–D, order on remand and extending sunset date, III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, order on rehearing and extending sunset date, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, order denying rehearing and granting clarification, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, order extending sunset date, 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, order on rehearing, 59 FR 52,896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994).

[3] 69 FERC ¶ 61,310 (1994).

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, order on rehearing, 54 FR 52781 (December 22, 1989); III FERC Stats. & Regs. ¶ 30,868 (1989); Order No. 497–B, order extending sunset date, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C, order extending sunset date, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991); rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497–D, order on remand and extending sunset date, III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, order on rehearing and extending sunset date, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, order denying rehearing and granting clarification, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, order extending sunset date, 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, order on rehearing, 59 FR 52,896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994).

[3] 69 FERC ¶ 61,310 (1994).

Divisions of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Utility-2000 should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Utility-2000 is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Utility-2000's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 30, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–1302 Filed 1–18–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Notice of Issuance of Proposed Decision and Order During the Week of October 3 Through October 7, 1994

During the week of October 3 through October 7, 1994, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 C.F.R. part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: January 12, 1995.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

Lovelace Gas Service, Inc. Orlando, FL, LEE–0131 Reporting Requirements

Lovelace Gas Service, Inc. filed an application for Exception from the requirement that it file Form EIA–782B. The exception request, if granted, would relieve the firm from the obligation of filing Form EIA–782B. On October 4, 1994, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 95–1351 Filed 1–18–95; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Proposed Decision and Order During the Week of October 17 Through October 21, 1994

During the week of October 17 through October 21, 1994, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: January 12, 1995.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

Keith E. Downward, Carrollton, OH, LEE–0128 Reporting Requirements

Keith E. Downward filed an application for Exception from the requirement that his firm file Form EIA–782B. The exception request, if granted, would relieve the firm from the obligation of filing Form EIA–782B. On October 20, 1994, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 95–1352 Filed 1–18–95; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Proposed Decision and Order During the Week of December 19 Through December 23, 1994

During the week of December 19 through December 23, 1994, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: January 12, 1995.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

Coker Oil, Inc., Lake City, SC, LEE–0161 Reporting Requirements

Coker Oil, Inc. filed an application for Exception from the requirement that it file Form EIA–782B. The exception request, if granted, would relieve the firm from the obligation of filing Form EIA–782B. On December 19, 1994, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 95–1353 Filed 1–18–94; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Proposed Decision and Order During the Week of October 31 through November 4, 1994

During the week of October 31 through November 4, 1994, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: January 12, 1995.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

John E. Retzner Oil Co., Inc., Sunman, IN, Lee–0147 Reporting Requirements

John E. Retzner Oil Co., Inc. (Retzner) filed an application for Exception from the provisions of the mandatory reporting requirements of Form EIA–782B. The exception request, if granted, would excuse Retzner from filing Form EIA–782B. On November 14, 1994, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 95–1355 Filed 1–18–95; 8:45 am]

BILLING CODE 6450–01–P

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for the disbursement of $75,638.48, plus accrued interest, in refined petroleum product violation amounts obtained pursuant to an April 10, 1985 Modified Remedial Order issued to Mockabee Gas & Fuel Co., Case No. VEF–0001 (Mockabee). The OHA has tentatively determined that the funds obtained from Mockabee, plus accrued interest, will be distributed to customers who purchased No. 2 heating oil or kerosene from Mockabee during the period of November 1, 1973 through December 31, 1975.

DATES AND ADDRESSES: Comments must be filed in duplicate within 30 days of publication of this notice in the Federal Register, and should be addressed to the Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, DC 20585. All comments should be marked with the reference number VEF–0001.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director,Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–2094 (Mann); 586–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute a total of $75,638.48, plus accrued interest, obtained by the DOE pursuant to the April 10, 1985 Modified Remedial Order issued to Mockabee. In the Modified Remedial Order, the DOE found that, during the period from November 1, 1973 through December 31, 1975, Mockabee sold No. 2 heating oil and kerosene in excess of the maximum lawful selling price.

The OHA has proposed to distribute the funds obtained from Mockabee in two stages. In the first stage, we will accept claims from identifiable purchasers of covered products from Mockabee who may have been injured by the overcharges. The specific requirements which an applicant must meet in order to receive a refund are set out in Section III of the Proposed Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of

gallons of covered product which they purchased from Mockabee.

If any funds remain after valid claims are paid in the first stage, they may be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07. Applications for Refund should not be filed at this time. Appropriate public notice will be provided prior to acceptance of claims.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Ave., S.W., Washington, DC 20585.

Dated: January 11, 1995.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

Name of Firm: Mockabee Gas & Fuel Co.

Date of Filing: October 18, 1994.

Case Number: VEF–0001.

On October 18, 1994, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) to distribute $75,638.48, plus accrued interest, which Mockabee Gas & Fuel Co. (Mockabee) remitted to the DOE pursuant to a Modified Remedial Order (MRO) issued by the OHA on April 10, 1985. In accordance with the provisions of the procedural regulations found at 10 CFR Part 205, subpart V (subpart V), the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of the regulatory violations set forth in the MRO. This Proposed Decision and Order sets forth the OHA's plan to distribute these funds.

I. Background

During the period relevant to this proceeding, Mockabee was a retailer of No. 2 heating oil, kerosene, diesel fuel, and motor gasoline in Upper Marlboro, Maryland. On December 18, 1974, the Federal Energy Administration (FEA) issued a Notice of Probable Violation to Mockabee. On January 28, 1975, the FEA issued a Remedial Order (RO) to Mockabee, finding that Mockabee had overcharged purchasers of No. 2 heating oil and kerosene. A further investigation disclosed additional overcharges other than those cited in the RO, and on December 22, 1976, the FEA rescinded the RO and issued a Revised Remedial Order requiring Mockabee to roll back prices to compensate consumers who were overcharged by Mockabee.

Mockabee failed to comply with the Revised Remedial Order. On April 10, 1985, the ERA [1] issued a Modified Remedial Order which rescinded the price rollbacks it had ordered Mockabee to make. Instead, the MRO required Mockabee to pay to the DOE $29,583.08 in assessed overcharges, and an additional $46,071.46 in interest due. On September 30, 1985, Mockabee appealed the MRO to the OHA, which denied the Appeal on December 19, 1985. *Mockabee Gas & Fuel Co.*, 13 DOE ¶ 83,059 (1985). Mockabee has since remitted $75,638.48 in compliance with the MRO, which is now available for distribution through Subpart V.

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan for the distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501 *et seq.*; *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

We have considered ERA's Petition that we implement a Subpart V proceeding with respect to the funds remitted by Mockabee and have determined that such a proceeding is appropriate. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute this fund. We intend to publicize our proposal and solicit comments from interested parties before taking the actions set forth in this Proposed Decision and Order. Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be filed with the OHA within 30 days of its publication in the Federal Register.

III. Proposed Refund Procedures

We propose to implement a two-stage refund procedure for distribution of the monies remitted by Mockabee (the Mockabee fund) by which purchasers of No. 2 heating oil and kerosene from Mockabee during the period covered by the MRO may submit Applications for Refund in the initial stage. From our experience with Subpart V proceedings, we expect that applicants generally will be limited to ultimate consumers (''end users''). Therefore, we do not anticipate that it will be necessary to employ the injury presumptions that we have used in past proceedings in evaluating applications submitted by refiners, resellers, and retailers.[2]

A. First Stage Refund Procedures

In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of No. 2 heating oil or kerosene from Mockabee during the period covered by the MRO—November 1, 1973 through December 31, 1975. Our experience also indicates that the use of certain presumptions permits claimants to participate in the refund process without incurring inordinate expense and ensures that refund claims are evaluated in the most efficient manner possible. See, *e.g.*, Marathon Petroleum Co., 14 DOE ¶ 85,269 (1986) (*Marathon*). Presumptions in refund cases are specifically authorized by the applicable Subpart V regulations at 10 C.F.R. § 205.282(e). Accordingly, we propose to adopt the presumptions set forth below.

1. Calculation of Refunds

First, we will adopt a presumption that the overcharges were dispersed equally over all of Mockabee's sales of products covered by the MRO during the period covered by the MRO. *See Permian Corp.*, 23 DOE ¶ 85,034 (1993). In accordance with this presumption, refunds are made on a pro-rata or volumetric basis.[3] In the absence of

[1] Under the DOE Organization Act, 42 U.S.C. 7151, *et seq.*, and Executive Order 12009, 42 Fed. Reg. 46367 (September 25, 1977), all functions vested by law in the FEA were transferred to and vested in the DOE. Within the DOE, the ERA was delegated the authority to investigate violations of applicable regulations and to seek compliance of those regulations.

[2] If a refiner, reseller, or retailer should file an application in this refund proceeding, however, we will utilize the standards and appropriate presumptions established in previous proceedings. See, *e.g., Stark's Shell Service*, 23 DOE ¶ 85,017 (1993); *Shell Oil Co.*, 18 DOE ¶ 85,492 (1989).

[3] If an individual claimant believes that it was injured by more than its volumetric share, it may elect to forgo this presumption and file a refund application based upon a claim that it suffered a disproportionate share of Mockabee's overcharges. See, *e.g., Mobil Oil Corp./Atchison, Topeka and Santa Fe Railroad Co.*, 20 DOE ¶ 85,788 (1990); *Mobil Oil Corp./Marine Corps Exchange Service*, 17 DOE ¶ 85,714 (1988). Such a claim will be granted if the claimant makes a persuasive showing that it

better information, a volumetric refund is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining prices.

Under the volumetric approach, a claimant's ''allocable share'' of the Mockabee fund is equal to the number of gallons of covered product purchased from Mockabee during the period covered by the MRO times the per gallon refund amount. In the present case, the per gallon refund is $0.0612. We derived this figure by dividing the monies remitted by Mockabee ($75,638.48) by the total volume of covered products sold by Mockabee from November 1, 1973 through December 31, 1975 (1,236,132 gallons). A claimant that establishes its eligibility for a refund will receive all or a portion of its allocable share plus a pro-rata share of accrued interest.[4]

In addition to the volumetric presumption, we also propose to adopt a presumption regarding injury for end-users.

2. End Users

In accordance with prior Subpart V proceedings, we propose to adopt the presumption that an end user or ultimate consumer of covered products purchased from Mockabee whose business is unrelated to the petroleum industry was injured by the overcharges resolved by the MRO. See, *e.g., Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). Unlike regulated firms in the petroleum industry, members of this group generally were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the overcharges on the final price of goods and services produced by members of this group would go beyond the scope of the refund proceeding. *Id.* We therefore propose that the end-users of covered products purchased from Mockabee need only document their purchase volumes from Mockabee during the period covered by the MRO to make a sufficient showing that they were injured by the overcharges.

B. Refund Applications Filed by Representatives

We propose to adopt the standard OHA procedures relating to refund applications filed on behalf of applicants by ''representatives,'' including refund filing services, consulting firms, accountants, and attorneys. See, *e.g., Stark's Shell Service,* 23 DOE ¶ 85,017 (1993); *Texaco, Inc.*, 20 DOE ¶ 85,147 (1990); *Shell Oil Co.*, 18 DOE ¶ 85,492 (1989). We will also require strict compliance with the filing requirements as specified in 10 CFR 205.283, particularly the requirement that applications and the accompanying certification statement be signed by the applicant.

The OHA reiterates its policy to closely scrutinize applications filed by filing services. Applications submitted by a filing service should contain all of the information indicated in the final Decision and Order in this proceeding.

C. Distribution of Funds Remaining After First Stage

We propose that any funds that remain after all first stage claims have been decided be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07. The PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to the OHA, and any funds in the Mockabee fund that the OHA determines will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of the PODRA.

It is therefore ordered that: the monies remitted to the Department of Energy by Mockabee Gas & Fuel Oil Co. pursuant to the Modified Remedial Order issued on April 10, 1985, will be distributed in accordance with the foregoing Decision.

[FR Doc. 95–1356 Filed 1–18–95; 8:45 am]

BILLING CODE 6450–01–P

was ''overcharged'' by a specific amount, and that it absorbed those overcharges. See *Panhandle Eastern Pipeline Co./Western Petroleum Co.*, 19 DOE ¶ 85,705 (1989). To the degree that a claimant makes this showing, it will receive an above-volumetric refund.

[4] As in previous cases, we propose to establish a minimum refund amount of $15. In this proceeding, any potential claimant purchasing less than 245 gallons of covered product from Mockabee would have an allocable share of less than $15. We have found through our experience that the cost of processing claims in which refund amounts of less than $15 are sought outweighs the benefits of restitution in those instances. See *Exxon Corp.*, 17 DOE ¶ 85,590 (1988).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5141–3]

Proposed Settlement; Acid Rain Core Rules Litigation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act (''Act''), notice is hereby given of a proposed third partial settlement of *Environmental Defense Fund* v. *Carol M. Browner, et al.*, No. 93–1203 (and consolidated cases) (D.C. Cir.).

The case involves challenges by several parties to the acid rain core rules published in the Federal Register on January 11, 1993, at 58 FR 3590 (January 11, 1993). The proposed settlement relates primarily to the issue of how ownership of a jointly owned unit is apportioned with respect to defining a dispatch system and to clarification of the definition of a ''sulfur-free generation.''

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement from persons who were not named as parties to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Copies of the settlement are available from Phyllis Cochran, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, (202) 260–7606. Written comments should be sent to Patricia A. Embrey at the above address and must be submitted on or before February 21, 1995.

January 12, 1995.

Jean C. Nelson,

General Counsel

[FR Doc. 95–1251 Filed 1–18–95; 8:45 am]

BILLING CODE 6560–50–M

[OPP–300370a; FRL–4932–5]

RIN 2070–AC02

Proposed Policy; Plant-Pesticides Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Federal Food, Drug, and Cosmetic Act; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: EPA is extending the comment period for a proposed statement of policy for pesticidal substances produced in plants (plant-pesticides) under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA) published in the Federal Register of November 23, 1994. The proposed statement of policy describes how EPA proposes to address pesticidal substances produced by plants under FIFRA and FFDCA.

DATES: Comments identified by the docket control number OPP– 300370a must be received on or before February 23, 1995.

ADDRESSES: Submit written comments by mail to: Program Resources Section, Public Response and Program Resources Branch, Field Operations Division (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: By mail: Bernice Slutsky, Science and Policy Staff, Office of Prevention, Pesticides and Toxic Substances (7101), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. E–627, 401 M St., SW., Washington, DC, (202–260–6900).

SUPPLEMENTARY INFORMATION: The substances plants produce to protect themselves against pests and disease are considered to be pesticides under the FIFRA definition of ''pesticide.'' These substances, along with the genetic material necessary to produce them are designated ''plant-pesticides'' by EPA. In the Federal Register of November 23, 1994 (59 FR 60496), EPA published a proposed policy statement that describes EPA's regulatory approach for plant-pesticides under FIFRA and FFDCA. In response to requests by interested parties, EPA is extending the comment period for the proposed policy statement by 30 days. Comments must now be received by February 23, 1995. Elsewhere in this issue of the Federal Register, EPA is also extending the comment period by 30 days for a proposed rule for plant-pesticides under FIFRA and three proposed exemptions from the requirement of a tolerance under FFDCA which were published in the Federal Register of November 23, 1994.

List of Subjects

Environmental protection, Biotechnology, Labeling, Plant-pesticides, Plants.

Dated: January 12, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 95–1321 Filed 1–18–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2051]

Petition for Reconsideration and Clarification of Actions in Rulemaking Proceedings

Petition for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed February 3, 1995. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Subject: Revision of Radio Rules and Policies. (MM Docket No. 91–140, RM–8414)
Number of Petitions Filed: 1

Subject: Implementation of Sections of the The Cable Television Consumer Protection and Competition Act of 1992—Rate Regulation. (MM Docket No. 92–266 and MM Docket No. 93–215)
Number of Petitions Filed: 9

Subject: Amendment of § 73.202(b) Table of Allotments FM Broadcast Stations. (Colonial Heights, Tennessee) (MM Docket No. 93–28, RM–8172 and 8299)
Number of Petitions Filed: 1

Subject: Amendment of § 73.202(b) Table of Allotments for FM Broadcast Stations. Athens, Ohio (MM Docket NO. 93–165, RM–8247) Hermantown, Minnesota (MM Docket No. 93–206, RM–8284) Balsam Lake, Wisconsin (MM Docket No. 93–213, RM–8351) Taylorville, Illinois (MM Docket No. 93–256, RM–8326)
Number of Petitions Filed: 2

Subject: Amendment of § 73.202(b) Table of Allotments for FM Broadcast Stations. (Isleboro and Winter Harbor, Maine) (MM Docket No. 93–203, RMs–8245 and 8340)
Number of Petitions Filed: 1

Subject: Implementations of sections 3(n) and 332 of the Communications Act—Regulatory Treatment of Mobile Services. (GN Docket No. 93–252)
Number of Petitions Filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–1222 Filed 1–18–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

American National Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing,

identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 1, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. American National Corporation, Omaha, Nebraska; to acquire Kirkpatrick Pettis Trust Company, Omaha, Nebraska, and thereby engage in performing fiduciary and related activities authorized for trust companies pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 12, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–1303 Filed 1–18–95; 8:45 am]

BILLING CODE 6210–01–F

Chittenden Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 13, 1995.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Chittenden Corporation, Burlington, Vermont; to acquire 100 percent of the voting shares of The Bank of Western Massachusetts, Springfield, Massachusetts.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. SunTrust Banks, Inc., Atlanta, Georgia; and Sun Banks, Inc., Orlando, Florida; to acquire 100 percent of the voting shares of Peoples State Bank, New Port Richey, Florida.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Ida Grove Bancshares, Inc., Ida Grove, Iowa; to acquire 80.1 percent of the voting shares of American National Bank, Holstein, Iowa.

Board of Governors of the Federal Reserve System, January 12, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–1304 Filed 1–18–95; 8:45 am]

BILLING CODE 6210-01-F

CS Holding and Credit Suisse, both of Zurich, Switzerland; Application to Engage in Nonbanking Activities

CS Holding and Credit Suisse, both of Zurich, Switzerland (Applicants), have applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), through BEA Associates, New York, New York (Company), to engage *de novo* in providing investment advisory services (including discretionary portfolio management services) to institutional customers with respect to futures and options on futures on certain financial and nonfinancial commodities. Company would provide the proposed services with respect to financial contracts previously approved by the Board (*See* SR Letter 93-27 (May 21, 1993)), Goldman Sachs Index Futures and options thereon that are traded on the Chicago Mercantile Exchange, and nonfinancial contracts previously approved by the Board. These activities would be conducted worldwide.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the ''closely related to banking'' test if it is demonstrated that banks generally have provided the proposed activity, that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed services, or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

Applicants maintain that the Board previously has determined by order and regulation that providing general investment advisory services with respect to futures and options on futures on financial and nonfinancial commodities is closely related to banking. *See* 12 CFR 225.25(b)(19); *Swiss Bank Corporation*, 77 Federal Reserve Bulletin 126 (1991) (*Swiss Bank*); *J.P. Morgan & Co., Incorporated*, 80 Federal Reserve Bulletin 151 (1994) (*J.P. Morgan*). Applicants state that they would provide general investment advisory services in accordance with the Board's rules and orders.

Applicants also maintain that the Board previously has not determined that providing discretionary portfolio management services with respect to futures and options on futures on financial and nonfinancial commodities is closely related to banking. Applicants state that Company only would provide discretionary portfolio management services to institutional customers, and only with the consent of such customers. Applicants also state that Company would comply with applicable law, including fiduciary principles, and obtain the consent of its customer before engaging, as principal or as agent in a transaction in which an

affiliate acts as principal, in transactions on the customer's behalf. Applicants maintain that the Board has permitted bank holding companies to provide general investment advisory services with respect to futures and options on futures on financial and nonfinancial commodities (12 CFR 225.25(b)(19), *Swiss Bank* and *J.P. Morgan*), and that the proposed discretionary services appear to be functionally similar to the securities-related investment advisory activities the Board has approved for bank holding companies generally in § 225.25(b)(4) of Regulation Y. Applicants conclude that for these reasons, providing discretionary portfolio management services with respect to futures and options on futures on financial and nonfinancial commodities is closely related to banking.

In order to approve the proposal, the Board must determine that the proposed activities to be conducted by Company ''can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' 12 U.S.C. § 1843(c)(8). Applicants believe that the proposal will produce public benefits that outweigh any potential adverse effects. In particular, Applicants maintain that the proposal will enhance competition and enable Applicants to offer their customers a broader range of products. In addition, Applicants state that the proposed activities will not result in adverse effects such as an undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than February 3, 1995. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, January 12, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–1305 Filed 1–18–95; 8:45 am]

BILLING CODE 6210–01–F

Josephine F. Waine 1992 Trust; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than January 31, 1995.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Josephine F. Waine 1992 Trust, Marco Island, Florida; to acquire an additional 6.2 percent (for a total of 11.5 percent) of the voting shares of Pacific National Corporation, Nantucket, Massachusetts, and thereby indirectly acquire Pacific National Bank of Nantucket, Nantucket, Massachusetts.

Board of Governors of the Federal Reserve System, January 12, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–1307 Filed 1–18–95; 8:45 am]

BILLING CODE 6210–01–F

Norwest Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 1, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to engage *de novo* through its wholly-owned subsidiary, Norwest Mortgage, Inc., Des Moines, in a joint venture with Mountain Pacific Mortgage, San Diego, California, and thereby engage in the residential mortgage lending business pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101

Market Street, San Francisco, California 94105:

1. U.S. Bancorp, Portland, Oregon; to engage *de novo* through U.S. Trade Services, Inc., Portland, Oregon, in issuing and paying letters of credit in Hong Kong and world-wide as well as conduct related letter of credit processing such as examining documents presented under letter of credit, transferring letters of credit at the request of beneficiaries, and creating trade acceptances from usance draft drawn under letter of credit pursuant to § 225.25(b)(1)(iv) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 12, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–1306 Filed 1–18–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (Federal Register, Vol 59, No. 102, pg. 27565, dated Friday, May 27, 1994) is amended to reflect an organizational change within the Bureau of Program Operations (BPO).

BPO is centralizing the Medicare Transaction System (MTS) activities within the currently established Medicare Transaction System Initiative Task Force. This change requires an amendment to the functional statement for the Medicare Transaction System Initiative Task Force (FLB–4) to reflect the Task Forces' responsibility for: (1) The oversight, coordination, and day-to-day monitoring of the MTS maintenance contract and the contract for independent verification and validation of the MTS development; and (2) the quality assurance of MTS development throughout the system development life cycle.

The specific amendment to part F is described below:

Section F.20.g., Medicare Transaction System Initiative Task Force (FLB–4) is deleted and replaced with the following:

g. Medicare Transaction System Initiative Task Force (FLB–4)

- Serves as the Agency focal point for the management and coordination of the Medicare Transaction System (MTS) initiative. Represents HCFA to the Department, other Federal Agencies, and outside organizations.
- Provides direction and technical guidance for the design, development, implementation, verification and validation, and maintenance of the MTS to integrate Medicare Part A and Part B claims processing systems.
- Provides technical management, oversight, coordination, and day-to-day monitoring for the MTS design, development, validation, implementation, and maintenance contract and the contract for independent verification and validation of the MTS development.
- Develops, implements, directs, and operates activities to assure the quality of MTS development throughout the system development life cycle.
- Establishes national policy and procedures and the transition of Medicare claims processing from the current Part A and Part B systems to the integrated MTS, operating sites, and local contractor operations.
- Recommends alternatives to existing processes and procedures and methods for improvement.
- Oversees the development of specifications for, and management of, any procurements that are necessary to conduct experiments incorporating approved alternatives to existing processes and procedures.

Dated: January 6, 1995.

Steven A. Pelovitz,

Associate Administrator for Operations and Resource Management.

[FR Doc. 95–1308 Filed 1–18–95; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–030–5–1430–01]

Realty Action: Sale of Public Land in Morgan County, Missouri

ACTION: Realty Action: Recreation and public purposes classification-MOES–036109.

SUMMARY: The following land has been classified as suitable for disposal to the Missouri Department of Conservation under authority of the Recreation and Public Purposes Act of 1926 (44 Stat. 741), as amended, 43 U.S.C. 869:

Fifth Principal Meridian,
T.41N., R.18W.,
Sec. 28, SWSW.
Containing 40.0 acres.

The purpose of this conveyance is to provide additional wildlife habitat to the adjacent Proctor Towersite State Wildlife Area.

The patent, when issued, will be subject to the provisions in 43 CFR 2741.8. In the event of noncompliance with the terms of the patent, title to the land shall revert to the United States. Classification of this land will segregate it from all appropriation except as to applications under the mineral leasing laws and the Recreation and Public Purposes Act. This segregation will terminate upon issuance of a patent, or eighteen (18) months from the date of this Notice, or upon publication of a notice of termination.

COMMENTS: For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to: District Manager, Milwaukee District Office, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201–0631.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this application is available at the Milwaukee District Office, Bureau of Land Management, 310 West Wisconsin Avenue, Suite 225, Milwaukee, Wisconsin 53203 or by calling Larry Johnson at 414–297–4413.

Dated: January 6, 1995.

Gary D. Bauer,

District Manager.

[FR Doc. 95–1278 Filed 1–18–95; 8:45 am]

BILLING CODE 4310–GJ–M

[NM–060–05–1050–00–602]

Collection of Entrance Fees for Specific Caves in Areas Listed as ''Special Areas'' and Special Recreation Management Areas (SRMA) Within the Bureau of Land Management (BLM) Roswell District, New Mexico

AGENCY: Bureau of Land Management, Roswell District.

ACTION: Cave entrance fee collection.

SUMMARY: The Roswell District, with authorization by the State Director, has determined that it would be feasible to collect fees for entrance to specific managed caves within the District. The feasibility is based on the deficit reduction legislation of Public Law 103–66, the Omnibus Budget Reconciliation Act of 1993, which further amended the Land and Water Conservation Fund Act (LWCFA) of 1965. The authorization is also based on the BLM Use Fee Policy for Recreation Areas in New Mexico of August 1989.

DATES: Written comments on the proposal will be accepted for April 19, 1995.

ADDRESSES: Written comments should be addressed to the Bureau of Land Management, Roswell District Office, 1717 West 2nd Street, Roswell, New Mexico, 88201–2019.

FOR FURTHER INFORMATION CONTACT: Paul T. Happel at the address listed above, telephone (505) 627–0203.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the Recreation Fee Policy for entrance fees for specific caves within the Roswell District by submitting written data, views, or arguments as they may desire. All comments received on or before the closing date for acceptance specified above will be considered before taking action on the recreation fee policy for caves. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available at the Roswell District Office, both before and after the closing date for comments, for examination by interested persons. Comment will be summarized and placed in the final Federal Register notice for collection of entrance fees for specific caves within the Roswell District, New Mexico. The proposal is as follows:

Fees for permit to enter BLM ''special areas'' caves where Special Recreation Permits will be required.

State: New Mexico
District: Roswell
Resources Areas: Roswell and Carlsbad

List of Caves

Crystal Cave
Crocket Cave
Doc Brito Cave
Endless Cave
Fort Stanton Cave
Wind Cave
Algerita Blossom Cave (ABC)
Jarnigan No 2 Cave
Lost Cave
Little Manhole Cave
McKittrick Cave
Sand Cave
Torgac Cave

The six criteria used as a basis for the collection of fees under the Land and Water Conservation Fund are listed as follows:

1. Direct and Indirect Cost to the Government

The direct cost to the government would be for signing at each cafe and a volunteer self-service pay station at caves which are checked on a weekly basis. There would be an additional workload for on-board personnel to collect fees at cave sites where there are self-service pay tubes. There would be an additional workload by on-board personnel associated with time spent processing the permits, receiving and accounting for money derived for money derived from the fee collection and tracking volunteer hours. Additional equipment such as locks, lock boxes, money bags, will be needed for the collection process.

The indirect costs to the government would be administrative staff time to supervise accounting, reporting and auditing functions. It could take the recreation planner an additional 5–10 minutes to derive the additional information at the time the permit is issued.

2. Benefits to the Recipient

There will be less ''no shows'' for people who obtain a free permit and cancel their date assigned to them to enter the cave. There could be an increase of volunteer time from the caving community on BLM projects, to obtain waivers of fees to enter the caves. Funding from permits would provide funding for work projects associated with the caves. In a pay-as-you-go society, the careers will know that their support for the program, through fees, will go directly into the management of caves, through the 1230 and 1231 accounts. Of the amount collected 15 percent will be immediately available to the collecting Resources Area to be used in the cave program.

3. Comparable Recreation Fees Charged by other Federal and Non-Federal Public Agencies Within New Mexico and Bordering States

Carlsbad Caverns National Park charges $8.00 per minor and $12.00 per adult for a ranger guided tour of Spider, Slaughter and Ogle Caves.

Because of the changes in the Land and Water Conservation Fund Act (LWCFA), the U.S. Forest Service is in the beginning stages of looking into charging for cave entry.

4. Economic and Administrative Feasibility of Fee Collection

The average number of car permits issued within the District is 500 permits per fiscal year. The effect of a fee permit may reduce the number of permits per year within the District. Cavers may use other caves to ply their activity. This may help reduce wear and tear on the caves, thus letting the cave animals reclaim traveled portions of the caves. Collection would be done by the administrative staff within the resource areas. In cases where a fee pay tube is located at the cave, fees will be collected by a resource person who regularly works the area. In the case of Fort Stanton Cave the administrative and maintenance people form Valley of Fires Recreation Area will collect the fees. The fees will be administered with 1230 and 1231 funds from Valley of Fires Recreation area. Existing Outdoor Recreation Planners at each resource areas will facilitate the paperwork for the application and permit process. Existing administrative personnel will collect the fees from the public and complete the accounting process. Overall revenue potential for fee collection could be a minimum $4,950 if 250 permits are maintained for the fiscal year. Of the above amount, 15 percent of the fees collected will be immediately available to the Resource Area collecting the fees. The above figure is derived as follows:

250 permits times $5.00 per application fee = ...	$1,200
250 Permits times $3.00 per participant times an average of 5 people per permit = ...	3,750
Total Projected Revenue	4,950

Caves which require a BLM authorized trip leader to lead the caving trip (such as Torgac Cave) will be charged a flat fee of $30.00 per trip. There may be some reduction of revenues due to Friends groups, educational, scientific, and volunteer groups who will be exempt from fees. If an individual volunteers five hours on a BLM authorized work project, the daily use fee will be waived for that individual for one day of caving.

5. Public Policy or Interest Served

The cave use within the District is mainly from New Mexico, the surrounding states of Texas, Colorado, and Arizona. A small portion of the visitors range from all over the United States and foreign countries. The cost of the permit system will be borne by the special interest caving groups and independent cavers. The existing services includes maintained roads to the caves and cave gates at each managed cave, which prevent unauthorized access to the caves.

6. Other Pertinent Factors

Fee collection will achieve better protection of caves through improvement or replacement of old cave gates for increased security. Locks and equipment can be purchased through the permit fees. Small research projects and cost share agreements can be funded. The fee system may spread the visitor use out to other areas and lessen

the impact on the caves which are intensively managed.

Field recommendation on implementation of entrance fees:

Entrance fee $3.00

Application fees $5.00

Rationale: Based upon the legislative criteria summary noted above, it is in the government's best interest to charge fees for caving for caves listed as ''special areas'' and Special Recreation Management Areas (SRMA).

Dated: January 7, 1995.

Leslie M. Cone,

District Manager.

[FR Doc. 95–1226 Filed 1–18–95; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

[PRT–797427]

Receipt of Applicant(s) for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.)

Applicant: Brita H. Cantrell, Executive Director, The Nature Conservancy, Tulsa, OK

The applicant requests a permit to include take activities for the Black-capped vireo for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days for the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice. (See **ADDRESSES** above.)

James A. Young,

Acting Regional Director, Region 2, Albuquerque, NM.

[FR Doc. 95–1277 Filed 1–18–95; 8:45 am]

BILLING CODE 4310–55–M

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Robert H. Goldie, Lisbon, NY, PRT–797955

The applicant requests a permit to import three male and six female captive-bred Cabots' tragopan (*Tragopan caboti*) for the purpose of enhancement of the species through breeding.

Applicant: Ron and Joy Holiday and Charles Lizza, Alachua, FL, PRT–797878

The applicant requests a permit to export and reimport two male and one female captive born leopards (*Panthera pardus*), three male and one female captive born tigers (*P. tigris*) and one male captive born clouded leopard (*Neofelis nebulosus*) for worldwide tours to enhance the survival of the species through conservation education.

Applicant: Miller Park Zoo, Bloomington, IL, PRT–797163

The applicant requests a permit to purchase in interstate commerce nine male captive born Parma wallabies (*Macropus parma*) to enhance the survival of the species through conservation education.

Applicant: Ringling Brothers-Barnum and Bailey Combined Shows, Inc. Vienna, VA, PRT–795222

The applicant requests a permit to import and reexport three captive born male tigers (*Panthera tigris*) from Chipperfield's Enterprises, Inc., Oxon, UK, to enhance the survival of the species through conservation education.

Applicant: Riverbanks Zoological Park, Columbia, SC, PRT–797329

The applicant requests a permit to import preserved kidneys from captive-held and captive-born specimens of black-footed cat (*Felis nigripes*) that have died in captivity in European and South African zoos for the purpose of scientific research to enhance the survival of the species.

Applicant: International Wildlife Veterinary Services, Fair Oaks, CA, PRT–797485

The applicant requests a permit to import blood samples of black rhinoceros (*Diceros bicornis*) from frozen collections currently maintained by the Kenya Wildlife Service and the Zimbabwe Department of Parks and Wildlife for the purpose of scientific research to enhance the survival of the species.

Applicant: Gary Strasser, Brookfield, IL, PRT–797865

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by L. Kock, ''Verborgenfontein'', Richmond, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: Thomas Couck, Sanderson, TX, PRT–797957

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by F. Bowker, ''Thornkloof'', Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: January 13, 1995.

Carol Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–1346 Filed 1–18–95; 8:45 am]

BILLING CODE 4310–55–P

Minerals Management Service

[DES 95–3]

Outer Continental Shelf, Alaska Region, Proposed Cook Inlet Lease Sale 149

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Availability of the Draft Environmental Impact Statement and Locations and Dates of Public Hearings.

The Minerals Management Service (MMS) has prepared a draft Environmental Impact Statement (EIS) relating to the proposed 1996 Outer Continental Shelf oil and gas lease sale of available unleased blocks in Cook Inlet. The proposed Cook Inlet Sale 149 will offer for lease approximately 2.0 million acres. Single copies of the draft EIS can be obtained from the Regional Director, Minerals Management Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99503–4302, Attention: Public Information. Copies can also be requested by telephone, (907) 271–6435.

Copies of the draft EIS will also be available for inspection in the following public libraries:

A. Holmes Johnson Memorial Library, 319 Lower Mill Bay Road, Kodiak, AK 99615
Alaska Pacific University, Academic Support Center Library, 4101 University Drive, Rm. 310, Anchorage, AK 99508–4672
Alaska Resources Library, U.S. Department of the Interior, Anchorage, AK
Alaska State Library, Government Publications, P.O. Box 110571, Juneau, AK 99811
Anchor Point Public Library, P.O. Box 129, Anchor Point, 99556
ARCO Alaska, Inc., Library, P.O. Box 100360, Anchorage, AK 99510–0360
Arctic Environmental Information and Data Center, University of Alaska, 707 A Street, Anchorage, AK
BP Exploration, Information Resource Center, P.O. Box 196612, Anchorage, AK 99519
Chiniak Public Library, P.O. Box 5610, Chiniak, AK 99615
Cordova Public Library, P.O. Box 1170, Cordova, AK 99574
Dillingham Public Library, P.O. Box 870, Dillingham, AK 99576
Fairbanks North Star Borough Public Library (Noel Wien Library) 1215 Cowles Street, Fairbanks, AK
U.S. Fish and Wildlife Service, Library, 1011 E. Tudor Rd., Anchorage, AK 99503
Halibut Cove Public Library, P.O. Box 6413, Halibut Cove, 99603
ENRI Information Services, 707 A Street, Anchorage, AK 99501
Jesse Wakefield Memorial Library, P.O. Box 49, Port Lions, AK 99550
Juneau Memorial Library, 114 - 4th Street, Anchorage
Juneau Public Library, 292 Marine Way, Juneau, AK 99801
Kasilof Public Library, P.O. Box 176, Kasilof, AK 99610
Kenai Community Library, 163 Main Street Loop, Kenai, AK 99611
Kenai Peninsula College, 34820 College Drive, Soldotna, AK 99669
Kenai Peninsula College, 533 E. Pioneer Ave., Homer, AK 99603
Ketchikan Public Library, 629 Dock Street, Ketchikan, AK 99901
Kettleson Memorial Library, 320 Harbor Road, Sitka, AK 99835
King Cove Community School Library, P.O. Box 6, King Cove, AK 99612
Kodiak College, 117 Benny Benson Drive, Kodiak, AK 99615
Martin Monson Library, P.O. Box 147, Naknek, AK 99633–0147
Nanwalek Elem/High School Library, P.O. Box 8007, Nanwalek, AK 99603–6007
Northern Alaska Environmental Center Library, 218 Driveway, Fairbanks, AK
Oil Spill Information Center, 645 G Street, Anchorage, AK 99510–0600
Oil Harbor Library, P.O. Box 109, Old Harbor, AK 99643
Palmer Public Library, 655 Soputh Valley Way, Palmer, AK 99645
Sand Point School Library, P.O. Box 269, Sand Point, AK 99661
Seldovia Public Library, Drawer D. Seldovia, AK 99663
Seward Community Library, P.O. Box 537, Seward, AK 99664
Soldotna Public Library, 235 Brinkley Street, Soldotna, AK 99669
State of Alaska, DEC Library, 410 Willoughby Avenue, Juneau, AK 99801–1795
State of Alaska Department of Fish and Game, Library, 333 Rasberry Road, Anchorage, AK 99518–1599
U.S. Army Corps of Engineers, Library, P.O. Box 898, Anchorage, AK 99506–0898
University of Alaska-Fairbanks, Elmer Rasmusson Library, 310 Tanana Drive, Fairbanks, AK 99775–1007
University of Alaska, Fairbanks Institute of Arctic Biology, 311 Irving Building, Fairbanks, AK
University of Alaska, Government Documents Library, 3211 Providence Drive, Anchorage, AK 99508
University of Alaska, Anchorage, Consortium Library, 3211 Providence Drive, Anchorage, AK 99508
University of Alaska-Juneau Library, 11120 Glacier Highway, Juneau, AK
University of Alaska, Seward Marine Center Library, P.O. Box 730, Seward, AK 99664
Valdez Public Library, P.O. Box 609, Valdez, AK 99686
Whittier Public Library, P.O. Box 749, Whittier, AK 99693
Z.J. Loussac Public Library, 3600 Denali Street, Anchorage, AK 99503

In accordance with 30 CFR 256.26, the MMS will hold public hearings to receive comments and suggestions relating to the EIS.

The hearings will be held on the following dates and times indicated:

March 3, 1995

University Plaza Building, 949 East 36th Avenue, Room 210, Anchorage, Alaska, 2:00 p.m.–5:00 p.m.

March 6, 1995

Merrit Inn, 260 S. Willow Street, Kenai, Alaska, 7:00 p.m.

March 7, 1995

Homer City Council Chambers, Homer, Alaska, 7:00 p.m.

March 8, 1995

UAA Fish Tech Center, Kodiak, Alaska, 7:00 p.m.

The hearings will provide the Secretary of the Interior with information from Government agencies and the public which will help in the evaluation of the potential effects of the proposed lease sale.

Interested individuals, representatives of organizations, and public officials wishing to testify at the hearings are asked to contact the Regional Director at the above address or Ray Emerson by telephone (907) 271–6652 or toll free 1–800–764–2627 by February 24, 1995.

Time limitations may make it necessary to limit the length of oral presentations to 10 minutes. An oral statement may be supplemented by a more complete written statement which may be submitted to a hearing official at the time of oral presentation or by mail until April 13, 1995. This will allow those unable to testify at a public hearing an opportunity to make their views known and for those presenting oral testimony to submit supplemental information and comments.

Comments concerning the draft EIS will be accepted until April 13, 1995, and should be addressed to the Regional Director, Minerals Management Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99508–4302.

Thomas Gernhofer,

Associate Director for Offshore, Minerals Management.

Approved: January 10, 1995.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 95–1310 Filed 1–18–95; 8:45 am]

BILLING CODE 8300–MR–P

Alaska Outer Continental Shelf, Cook Inlet, Natural Gas and Oil Lease Sale 149

AGENCY: Minerals Management Service, Interior.

ACTION: Availability of the proposed notice of sale.

Alaska Outer Continental Shelf (OCS); Notice of Availability of the Proposed Notice of Sale for Proposed Natural Gas and Oil Lease Sale for Proposed Natural Gas and Oil Lease Sale 149 in Cook Inlet. This Notice of Availability is published pursuant to 30 CFR 256.29(c), as a matter of information to the public.

With regard to natural gas and oil leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, provides the affected States the opportunity to review proposed Notices of Sale.

The proposed Notice of Sale for this proposed Sale 149 may be obtained by written request to the Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Anchorage, Alaska, 99508–4301, or by telephone at (907) 271–6691.

The final Notice of Sale will be published in the Federal Register at least 30 days prior to the date of bid opening.

Dated: January 10, 1995.

Cynthia Quarterman,

Acting Director, Minerals Management Services.

[FR Doc. 95–1311 Filed 1–18–95; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–702 (Final)]

Ferrovanadium and Nitrided Vanadium From Russia

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–702 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Russia of ferrovanadium and nitrided vanadium, provided for in subheadings 7202.92.0000, 7202.99.5040, 8112.40.3000 and 8112.40.6000 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: December 30, 1994.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of ferrovanadium and nitrided vanadium from Russia are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on May 31, 1994, by counsel on behalf of Shieldalloy Metallurgical Corp., New York, NY.

Participation in the investigation and public service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in this investigation will be placed in the nonpublic record on May 10, 1995, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on May 23, 1995, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 12, 1995. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 17, 1995, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera.*

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is May 17, 1995. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is May 31, 1995; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 31, 1995. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the

investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

Issued: January 12, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–1333 Filed 1–18–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 731–TA–703 and 704 (Final)]

Furfuryl Alcohol From China and South Africa

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731–TA–703 and 704 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China and South Africa of furfuryl alcohol, provided for in subheading 2932.13.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: December 16, 1994.

FOR FURTHER INFORMATION CONTACT: Fred H. Fischer (202–205–3179), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of furfuryl alcohol from China and South Africa are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b). The investigations were requested in a petition filed on May 31, 1994, by counsel on behalf of QO Chemicsls, Inc., West Lafayette, IN.

Participation in the investigations and public service list.—Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in these investigations will be placed in the nonpublic record on April 18, 1995, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on May 3, 1995, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 21, 1995. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 26, 1995, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera.*

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is April 26, 1995. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is May 11, 1995; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before May 11, 1995. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

Issued: January 12, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–1334 Filed 1–18–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–369]

Certain Health and Beauty Aids and Identifying Marks Thereon; Investigation

AGENCY: U.S. International Trade Commission

ACTION: Institution of investigation pursuant to 19 U.S.C. § 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 2, 1994, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of Redmond Products, Inc. 18930 West 78th Street, Chanhassen, MN 55317. An amended complaint was filed on December 16, 1994, and supplementary letters were filed on December 22 and 23, 1994. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain health and beauty aids by reason of infringement of federally registered and common law trademarks incorporating the terms ''Aussie'' or ''Australian.'' The complaint further alleges that there exists an industry in the United States with regard to the health and beauty aids at issue, and that the domestic industry is being injured or is threatened with injury because of the allegedly infringing articles.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2571.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Final Rules of Practice and Procedure (59 Fed. Reg. 39022, August 1, 1994).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 6, 1995, Ordered That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, the sale for importation or the sale within the United States after importation of certain health and beauty aids and identifying marks thereon by reason of infringement of common law rights in trademarks incorporating the terms ''Aussie'' or ''Australian'', the threat or effect of which is to destroy or substantially injure an industry in the United States; and

(b) whether there is a violation of subsection (a)(1)(C) of section 337 in the importation into the United States, the sale for importation or the sale within the United States after importation of certain health and beauty aids and identifying marks thereon, by reason of infringement of certain federally registered trademarks incorporating the terms ''Aussie'' or ''Australian,'' and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Redmond Products, Inc., 18930 West 78th Street, Chanhassen, Minnesota 55317.

(b) The respondent is the following company alleged to be in violation of Section 337, and is the party upon which the complaint is to be served: Belvedere International, Inc., 5675 Keaton Crescent, Mississauga, Ontario, L5R 3G3 Canada.

(c) Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–O, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Final Rules of Practice and Procedure. 59 FR 39022, August 1, 1994. Pursuant to 19 CFR 201.16(d) and section 210.13(a) of the Commission's Final Rules (59 Fed. Reg. 39022, August 1, 1994), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: January 9, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–1335 Filed 1–18–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–361]

Certain Portable On-Car Disc Brake Lathes and Components Thereof; Commission Determination Not to Review an Initial Determination Issued on Remand; Determination of No Violation of Section 337 of the Tariff Act of 1930

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the initial determination (ID) issued on November 28, 1994, by the presiding administrative law judge (ALJ) after remand by the Commission in the above-captioned investigation, thereby finding that there is no violation of section 337 of the Tariff Act of 1930 in the investigation.

FOR FURTHER INFORMATION CONTACT: Shara L. Aranoff, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3090. Copies of the non-confidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the

Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: On November 24, 1993, the Commission instituted an investigation of a complaint filed by Pro-Cut International, Inc. (''Pro-Cut'') under section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337). The complaint alleged that two respondents imported, sold for importation, or sold in the United States after importation certain portable on-car disc brake lathes and components thereof that infringed the sole claim of U.S. Letters Patent 4,226,146 (''the '146 patent''). The Commission's notice of investigation named as respondents Hunter Engineering Company (''Hunter'') and Ludwig Hunger Maschinenfabrik GmbH (''Hunger''), each of which was alleged to have committed one or more unfair acts in the importation or sale of portable on-car disc brake lathes that infringe the asserted patent claim.

The ALJ conducted an evidentiary hearing on May 2–4, 1994, and issued his final ID on August 12, 1994. He found that: (1) respondents' imported product does not infringe the asserted patent claim; (2) complainant satisfied the economic requirements for existence of a domestic industry; but that (3) there is no domestic industry because complainant is not practicing the '146 patent. Based upon his findings of no infringement and no domestic industry, the ALJ concluded that there was no violation of section 337.

On September 29, 1994, the Commission determined to review the August 12 final ID and to remand the ID in part to the ALJ for further explanation of his findings of no infringement under the doctrine of equivalents and no domestic industry. The Commission ordered the ALJ to issue an ID on the remanded issues on or before November 28, 1994. The Commission adopted the August 12 final ID in all other respects.

On November 28, 1994, the ALJ issued an ID addressing the remanded issues. The remand ID provides additional findings of fact and analysis and reiterates the ALJ's prior findings of no infringement under the doctrine of equivalents and no domestic industry. Complainant filed a petition for review objecting to both findings of the remand ID. Both respondents and the Commission investigative attorneys filed oppositions to the petition for review supporting the ALJ's findings in the remand ID. No agency comments were received.

Having considered the record in this investigation, including the August 12 final ID, the November 28 remand ID, and all submissions filed in connection with the petitions for review of both IDs, the Commission determined not to review the November 28 remand ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 USC 1337, and sections 210.53 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.53.

Issued: January 10, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–1336 Filed 1–18–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigation 337–TA–368]

Certain Rechargeable Nickel Metal Hydride Anode Materials and Batteries, and Products Containing Same; Notice of Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondents on the basis of a settlement agreement: Toshiba Battery Company, Ltd., Toshiba America Information System, Inc., and Toshiba America Consumer Products.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on January 13, 1995.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, S.W., Washington, D.C. 20436, no later than five days after publication of this notice in the Federal Register. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: January 13, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–1337 Filed 1–18–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–368]

Certain Rechargeable Nickel Metal Hydride Anode Materials and Batteries, and Products Containing Same; Notice of Decision Not to Review Initial Determination Granting Joint Motion To Terminate the Investigation with Respect to Respondents Sanyo Electric Co., Ltd. and Sanyo Energy (USA) Corp. on the Basis of a License Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 8) issued on December 15, 1994, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting the joint motion of complainants Energy Conversion Devices, Inc. and Ovonic Battery Co., Inc. and respondents Sanyo Electric Co., Ltd. and Sanyo Energy (USA) Corp. (collectively ''the Sanyo companies'') to terminate the investigation as to the Sanyo companies on the basis of a licensing agreement.

FOR FURTHER INFORMATION CONTACT: Marc A. Bernstein, Office of the General Counsel, U.S. International Trade

Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3087.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of section 337 violations in the importation, sale for importation, and sale after importation of certain rechargeable nickel metal hydride anode materials and batteries and products containing same, on September 8, 1994. Complainants allege infringement of claims 1–17, 22, 23, 25, 27, and 32 of U.S. Letters Patent 4,623,597 (''the '597 patent'').

On December 9, 1994, complainants and the Sanyo companies filed a joint motion to terminate the investigation with respect to the Sanyo companies on the basis of a licensing agreement. The ALJ issued an ID granting the joint motion and terminating the investigation as to the Sanyo companies. No petitions for review of the ID were filed. No agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission rule 210.42, 19 C.F.R. 210.42.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: January 10, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–1338 Filed 1–18–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32640]

Canadian National Railway Company; Contract to Operate; Grand Trunk Western Railroad Inc. and Duluth, Winnipeg & Pacific Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision accepting application for consideration.

SUMMARY: The Commission is accepting for consideration the application filed December 19, 1994, by Canadian National Railway Company (CN), the Grand Trunk Western Railroad Inc. (GTW), and the Duluth, Winnipeg and Pacific Railway Co. (DWP) (collectively, applicants), for approval of an agreement among the applicants under which CN will contract to operate the properties of GTW and DWP. Under 49 CFR part 1180, the Commission finds this to be a minor transaction.

DATES: Written comments must be filed with the Commission no later than February 17, 1995, and concurrently served on applicants' representatives, the United States Secretary of Transportation (Secretary of Transportation), and the Attorney General of the United States (Attorney General). Comments from the Secretary of Transportation and the Attorney General must be filed by March 6, 1995. The Commission will issue a service list shortly thereafter. Comments must be served on all parties of record within 5 days of the issuance of the service list and confirmed by certificate of service filed with the Commission indicating that all designated individuals and organizations on the service list have been properly served. Applicants' reply is due by March 20, 1995.

ADDRESSES: Send an original and 10 copies of all documents to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 32640, Interstate Commerce Commission, Washington, DC 20423. In addition, concurrently send one copy of all documents to the Secretary of Transportation, the Attorney General, and applicants' representatives: (1) Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 8201, 400 Seventh St., SW, Washington, DC 20590; (2) Attorney General of the United States, United States Department of Justice, 10th St. & Constitution Ave., NW, Washington, DC 20530; and (3) John Will Ongman, John F. DePodesta, and George A. Lehner, Pepper, Hamilton & Scheetz, 1300 19th Street, NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: By application filed December 19, 1994, Commission approval is being sought under 49 U.S.C. 11343–45 for CN to contract to operate the properties of two wholly owned subsidiaries, GTW and DWP.[1]

CN is a Canadian Crown Corporation incorporated under a special act of the Parliament of Canada.[2] GTW is a Delaware corporation and a class I railroad. DWP is a Minnesota corporation and a class II railroad. Grand Trunk Corporation (GTC) is a noncarrier holding company of CN's American rail properties, including GTW and DWP. CN connects with GTW at the St. Clair River Tunnel at Sarnia, Ontario and Port Huron, Michigan, and at the Detroit Tunnel at Windsor, Ontario and Detroit, Michigan. CN connects with DWP at Fort Francis/Rainy River, Ontario. Included in the application as an applicant carrier is the St. Clair Tunnel Co. (SCTC), a class III carrier. SCTC is 97% owned by the noncarrier, St. Clair Tunnel Construction Co. (SCTCC) and 3% owned by three of its directors. SCTCC is in turn 75% owned by GTC and 25% owned by CN.

Applicants state that the purpose of the application is to seek Commission approval for the contract to operate the properties of GTW and DWP and the operating plan developed to implement the contract to operate. According to applicants, GTW and DWP currently operate as independent entities. The contract to operate and the operating plan will coordinate and integrate service and operations among GTW, DWP and CN under the trade name CN North America. It is intended to permit the applicants to provide the seamless, single-line service that shippers

[1] Applicants simultaneously filed a petition for a finding of cause for a supplemental order under 49 U.S.C. 11351 and for procedural relief. In this petition, applicants alternatively request that we make a generic finding of cause under 49 U.S.C. 11351 to enable us to exercise our power under that section to issue any order dealing with the matters raised by the contract to operate as pertains to *Grand Trunk W.R. Co. Unification of Securities,* 158 I.C.C. 117 (1929) [*Acquisition of Control By Canadian National Railway*), Finance Docket No. 7320 (Sub-No. 1)]; and *Norfolk & W. Ry. Co.—Control—Detroit, T.I.R. Co.,* 360 I.C.C. 498 (1979) [*Grand Trunk Western Railroad—Control—Detroit, Toledo & Ironton Railroad Co. and Detroit, Toledo Shore Line Railroad Co.,* Finance Docket No. 28676 (Sub-No. 1)]. They also request that a protective order be entered in a form which they provide, that their proposed procedural schedule be approved, and that clarification or waiver of the regulations requiring certain information be granted. We will deny the request for a generic finding of cause because applicants have not established a need for such a finding, and we will grant the remaining requests. The requested protective order will be issued simultaneously with or shortly after issuance of this notice.

[2] CN does not generate sufficient revenues from its operations in the United States to achieve class I status. *See Canadian National Railway Company—Trackage Rights Exemption—Grand Trunk Western Railroad Inc.,* Finance Docket No. 32499 (ICC served July 25, 1994).

assertedly are seeking. Applicants state that this coordination and integration will enhance competition in the surface transportation industry; make GTW, in particular, a more efficient and viable property;[3] and provide substantial transportation benefits to the shipping public.

Applicants characterize the proposed transaction as ''akin to an end-to-end merger in which connecting railroads whose routes do not overlap, but rather complement each other, join forces to create a stronger competitor in a highly competitive transportation market.'' They view the resulting change in the competitive balance as a positive one because ''CN North America will be able to offer greatly improved service that will make it a viable transportation alternative for many shippers.'' According to applicants, the proposed transaction ''will produce no results which suggest an adverse effect on competition, such as significantly higher rail rates to shippers or poorer rail service levels.'' To the contrary, applicants contend that the integration of CN and GTW and DWP will reduce costs and improve service.[4]

Applicants project that some traffic currently moving by other carriers will shift to CN North America as a result of the transaction, but that this does not signal harm to competition.[5] Applicants state that the impact on its competitors will be limited and will certainly not affect their ability to provide essential transportation services. They also assert that no U.S. port will suffer a significant diversion of traffic to Canadian ports. Lastly, applicants argue that even if the transaction were to produce some anticompetitive effects, the public benefits would dramatically outweigh such effects.

Applicants state that the transaction will affect certain agreement and nonagreement employees. According to applicants, it is not possible for them to state precisely the ultimate impact of the integration transaction on labor, because in some instances this impact will occur only after fully integrated train service has been implemented. Applicants submit that if this transaction were among U.S. railroads and dealt with predominantly U.S. domestic traffic, the appropriate labor protection would be as prescribed in *New York Dock Railway—Control—Brooklyn Eastern District Terminal,* 360 I.C.C. 60 (1979) (*New York Dock*).

Applicants argue that to reflect the extraordinary circumstances involved in the integration of two U.S. railroads with a predominantly Canadian railroad, some adjustments to the standard *New York Dock* conditions should be made. This is because, according to applicants, Canadian immigration law will not permit most GTW and DWP employees to follow work transferred to Canada. Therefore, applicants propose the following modifications to the *New York Dock* conditions. First, modify Article I, section 6(d) to require dismissed employees to accept comparable positions in another craft or class at any location on the GTW and DWP. Such employees will receive the protective benefits of Article I, sections 5, 9, and 12 and Article II, regarding displacement allowances, moving expenses, reimbursement for losses on home removal, and, if necessary, retraining. Second, modify Article I, section 6(d) to require dismissed employees to make reasonable efforts to obtain employment with an employer in another industry, so long as such outside employment does not require a change in residence. (Applicants expand on what reasonable efforts include.) Third, impose on employees who may elect benefits of existing protection agreements under Article I, section 3, the same modified obligations to accept comparable employment described under the second modification. Fourth, clarify Article I, section 1 to provide for a 6-year protective period, with total labor protection costs capped at the cost of 4 years' protection multiplied by 1.19.

On December 28, 1994, the Transportation Communications Union and the United Transportation Union (collectively, Unions) filed a protest to applicants' proposed procedural schedule and to their characterization of the transaction as minor. The Unions argue that this is a major transaction and, as such, that the prefiling notification under 49 CFR 1180.4(b) must be 3 to 6 months, with an additional 3 months added to make up for applicants' failure to comply with the allegedly applicable prefiling notification requirements. Also, on January 9, 1995, the Brotherhood of Locomotive Engineers (BLE) moved to dismiss or reject the application and replied to applicants' petition for a finding of cause. BLE submits that the application must be rejected or dismissed because there is no basis for the exercise of the Commission's authority under 49 U.S.C. 11343. According to BLE, CN already controls the GTW and DWP, and this control authority includes the authority to engage in the various marketing and operating coordinations proposed in the operating plan accompanying the operating agreement. BLE argues that the only other purpose stated in the application is to abrogate or modify the provisions in the existing labor agreements, which raises the question of whether this is a sham transaction. Applicants replied on January 12, 1995.

At the outset, we note that under 49 U.S.C. 11347 the Commission is required to impose at least *New York Dock* conditions in 49 U.S.C. 11343 transactions. While we may impose enchanced protection, applicants have not demonstrated why negotiations and dispute resolution procedures (including arbitration) under the provisions of *New York Dock* cannot effectively accommodate implementation of the transaction.

Under 49 CFR 1180.4(b)(2)(iv), we must determine whether a proposed transaction is major, significant, minor or exempt. The proposal here does not involve the control or merger of two or more class I railroads and has no national significance. While the proposed transaction may have regional significance because it should increase the level of competition in the affected areas, it nevertheless concerns carriers that already are under common control and that arguably may accomplish much of what is sought here without need for our approval. The greatest impact of the transaction may well be on rail labor and management, but these concerns can be adequately addressed under *New York Dock.* Accordingly, we find the proposal to be a minor transaction as defined in 49 CFR 1180.2(c). *See RR. Consolidation Proced. of Significant Transactions,* 9 I.C.C. 2d 1198 (1993). Because the application complies with our regulations governing minor transactions, we are accepting it for consideration. We will deny the Union's request to amend the procedural schedule to conform it to a major transaction under 49 U.S.C. 1180.2 *et al.* with an additional 60 days to address labor protective conditions. We will also deny BLE's motion to reject the application. The arguments raised by BLE in its alternative motion to dismiss are also denied but can be considered in

[3] Applicants predict that the transaction will result in a dramatic improvement in GTW's financial performance. They characterize GTW's current financial status as ''suffering massive losses, which prevent it from making much needed capital improvements and which—unless reversed—threaten its ability to provide transportation services in the future.''

[4] Applicants predict reduced transit times, improved service reliability, and economies of scale flowing from the consolidation of shops and administrative functions.

[5] Applicants' projections of volume growth in intermodal traffic include 101,000 units of traffic currently moving by truck and 67,000 units currently moving by rail. This projected growth in carload traffic includes 22,800 carloads diverted from other railroads.

the subsequent decision on the merits of the transaction based upon supplemental or further legal argument.

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, copies may be obtained upon request from applicants' representatives named above.

Any interested person, including government entities, may participate in the proceeding by submitting written comments. Any person who filed timely written comments shall be considered a party of record if the person's comments so request. In this event, no petition for leave to intervene need be filed.

Consistent with 49 CFR 1180.4(d)(1)(iii), written comments must contain:

(a) The docket number and title of the proceeding;

(b) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(c) The commenting party's position, i.e., whether it supports or opposes the proposed transaction;

(d) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment upon the proposal;

(e) If desired, a request for oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can only be resolved at a hearing; and

(f) A list of all information sought to be discovered from applicant carriers.

Because we have determined that this constitutes a minor transaction, no responsive applications will be permitted. We are adopting applicants' proposed schedule for processing this transaction. The proposed schedule cuts 60 days from the usual 180-day schedule set forth at 49 U.S.C. 11345(d) for processing minor transactions. See 49 CFR 1180.4.

Discovery may begin immediately. We admonish parties to resolve all discovery matters expeditiously and amicably.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This application is accepted for consideration as a minor transaction under 49 CFR 1180.2(c). Applicants' alternative petition for a generic finding of cause for a supplemental order under 49 U.S.C. 11351 is denied.

2. The petition of the Unions for handling as a major transaction is denied, and the petition of BLE for rejection and its alternative motion to dismiss are denied except that supplemental or further argument may be submitted as to the latter.

3. Applicants' request to waive the information requirements of 49 CFR 1180.6 (a)(2)(v) and (a)(5), (6), and (7)(v) is granted with respect to the other specified carriers not directly related to the proposed transaction.

4. The parties shall comply with all provisions stated above.

Decided: January 13, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 95–1395 Filed 1–18–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32567]

Central Oregon & Pacific Railroad, Inc.—Lease, Operation, and Acquisition Exemption—Southern Pacific Transportation Company

Central Oregon & Pacific Railroad, Inc. (CORP), a noncarrier, has filed a verified notice under 49 CFR Part 1150, Subpart D—*Exempt Transactions* to lease, acquire and operate certain lines owned by the Southern Pacific Transportation Company (SPT) and to acquire certain incidental trackage rights in connection therewith for a total distance of approximately 446.05 miles in Coos, Douglas, Jackson, Josephine, and Lane Counties, OR and Siskiyou County, CA. The notice filed by CORP erroneously reported the total mileage as 446.37. Counsel for CORP has confirmed that this figure should be 446.05. CORP will (1) lease and operate (a) 23.37 miles of SPT's rail line between milepost 786.500 at or near Coquille, OR and milepost 763.130 at or near Cordes, OR; (b) .250 miles between milepost 644.300 at or near Springfield Junction, OR and milepost 644.020 and between milepost 644.020 and milepost 621.300 on the SPT's Cascade Line; and (c) 79.0 miles between milepost 425.290 at or near Bellview, OR and milepost 346.00 at or near Black Butte, CA; (2) acquire and operate (a) 111.016 miles between milepost 763.13 at or near Cordes, OR and milepost 652.114 at or near Danebo, OR, (b) 218.730 miles between milepost 644.020 at or near Springfield Jct., and milepost 425.290 at or near Bellview, OR to milepost 346.000 and (c) 5.87 miles between milepost 450.5 at or near Tolo, OR and milepost 456.374 at or near White City, OR (White City Branch); and (3) acquire 7.814 miles of incidental trackage rights between milepost 652.114 at or near Danebo, OR and milepost 644.300 at or near Springfield Jct., OR, including access to SPT's Eugene, OR Yard.

The proposed transaction was expected to be consummated on December 31, 1994.

This proceeding is related to *RailTex, Inc.—Continuance in Control Exemption—Central Oregon & Pacific Railroad, Inc.*, Finance Docket No. 32568, wherein RailTex seeks an exemption for its continuance in control of CORP once it acquires or leases rail lines from SPT and becomes a rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to reopen will not stay the exemption's effectiveness. Pleadings must be filed with the Commission and served on Robert L. Calhoun, Sullivan & Worcester, Suite 1000, 1025 Connecticut Ave., N.W., Washington, DC 20036.

Decided: January 13, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–1513 Filed 1–18–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32639 and Finance Docket No. 32639 (Sub-No. 1)]

Metro North Commuter Railroad Company—Acquisition Exemption—The Maybrook Line and Metro North Commuter Railroad Company—Exemption—From 49 U.S.C. Subtitle IV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts: (1) from the requirements of 49 U.S.C. 11343–11345, the acquisition by Metro North Commuter Railroad Company from Maybrook Properties, Inc., of the Maybrook Line, between milepost 71.2 on the Connecticut/New York State Line and approximately milepost 0.0 [1] at Beacon, NY, a distance of 41.1 miles, subject to standard employee protective conditions and (2) Metro North Commuter Railroad

[1] The connecting branches that form the Maybrook Line also retain their original milepost designations used by the former New York Central and New York, New Haven & Hartford, which are milepost 12.8 and milepost 42.9.

Company from the requirements of 49 U.S.C. Subtitle IV.

DATES: The exemption is effective on January 13, 1995. Petitions to reopen must be filed by February 8, 1995.

ADDRESSES: Send pleadings, referring to Finance Docket Nos. 32639 and 32639 (Sub-No. 1), to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Petitioner's representative: John D. Heffner, REA, CROSS & HEFFNER, 1920 N Street, N.W., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5612. [TTD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TTD services, (202) 927–5721.]

Decided: January 12, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 95–1290 Filed 1–18–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32568]

RailTex, Inc.—Continuance in Control Exemption—Central Oregon & Pacific Railroad, Inc.

RailTex, Inc. (RailTex), a noncarrier, has filed a verified notice under 49 CFR 1180.2(d)(2) to continue to control Central Oregon & Pacific Railroad, Inc. (CORP), upon the latter's becoming a class III carrier.

CORP has concurrently filed a verified notice of exemption in *Central Oregon & Pacific Railroad, Inc.—Lease, Operation, and Acquisition Exemption—Southern Pacific Transportation Company,* Finance Docket No. 32567, for CORP's lease, acquisition, and operation of 446.05 miles of rail line owned by Southern Pacific Transportation Company, between specified points in Coos, Douglas, Jackson, Josephine, and Lane Counties, OR and Siskiyou County, CA. The proposed transaction was expected to be consummated on December 31, 1994.

RailTex currently controls 14 class III railroads: New England Central Railroad; Chesapeake & Albemarle Railroad Company, Inc.; Indiana Southern Railroad, Inc.; North Carolina & Virginia Railroad Company, Inc.; Mid-Michigan Railroad, Inc.; Missouri & Northern Arkansas Railroad Company, Inc.; Austin & Northwestern Railroad Company, Inc.; South Carolina Central Railroad Company, Inc.; Dallas, Garland & Northeastern Railroad, Inc.; San Diego & Imperial Valley Railroad Company, Inc.; New Orleans Lower Coast Railroad Company, Inc.; Michigan Shore Railroad Company, Inc.; Salt Lake City Southern Railroad Company, Inc.; and Grand Rapids Eastern Railroad, Inc. RailTex also controls two Canadian rail carriers.

This continuance in control transaction is exempt from the prior approval requirements of 49 U.S.C. 11343 under 49 CFR 1180.2(d)(2) because: (1) CORP does not connect with any other railroad in the corporate family; (2) the continuance in control is not a part of a series of anticipated transactions that would connect CORP with any other railroad in its corporate family; and (3) the transaction does not involve a class I carrier.

As a condition to use of this exemption, any employees affected by the transaction must be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.,* 360 I.C.C. 60 (1979).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the exemption's effectiveness. Pleadings must be filed with the Commission and served on: Robert L. Calhoun, Sullivan & Worcester, Suite 1000, 1025 Connecticut Ave., N.W., Washington, DC 20036.

Decided: January 13, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–1512 Filed 1–18–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether section 3504(h) of Pub. L. 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Records and Reports of Registrants: Changes in Record Requirements for Individual Practitioners.

(2) Drug Enforcement Administration.

(3) Primary = Individuals or households, Others = Business or other for-profit. The information is needed to maintain a closed system of records by requiring the individual practitioner to keep records of (1) complimentary samples of controlled substances dispensed to patients and (2) narcotic and nonnarcotic controlled substances which are both administered and dispensed to patients.

(4) 100,500 annual respondents at .5 hours per response.

(5) 50,250 annual burden hours.

(6) Not applicable under section 3504(h) of Pub. L. 96–511.

Public comment on this item is encouraged.

Dated: January 12, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–1255 Filed 1–18–95; 8:45 am]

BILLING CODE 4410–09–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether section 3504(h) of Pub. L. 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Import/Export Declaration: Precursor and Essential Chemicals.

(2) DEA Form 486. Drug Enforcement Administration.

(3) Primary=Business or other for-profit, Others=Individuals or households. The Chemical Diversion and Trafficking Act of 1988 requires those who import/export certain chemicals to notify the DEA 15 days prior to shipment. Information will be used to prevent shipments not intended for legitimate purposes.

(4) 1800 annual respondents at .20 hours per response.

(6) 360 annual burden hours.

(7) Not applicable under section 3504(h) of Pub. L. 96–511.

Public comment on this item is encouraged.

Dated: January 12, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–1256 Filed 1–18–95; 8:45 am]

BILLING CODE 4410–09–M

Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with the policy of the Department of Justice, 28 CFR 50.7, and 42 U.S.C. 9622(d)(2)(B), notice is hereby given that a proposed Fourth Partial Consent Decree in *United States* v. *City of Monterey Park, et al.,* Civil Action No. 94–8685 KN, was lodged on December 29, 1994, with the United States District Court for the Central District of California. That action was brought pursuant to the Comprehensive Environmental Response, Compensation and Liability Act for cleanup and cost recovery at the Operating Industries, Inc. Superfund site in Monterey Park, California.

Pursuant to the Consent Decree, a group of settling municipalities, governmental entities, waste transporters, and industrial waste generators will put the proceeds from a settlement those parties have reached in a private action into an escrow account set up under this consent decree for use for performance of remedial actions at the site, and partial reimbursement of past costs. The value of this settlement is approximately $54 million.

As provided in 28 CFR 50.7 and 42 U.S.C. 9622(d)(2)(B), the Department of Justice will receive comments from persons who are not named as parties to this action relating to the proposed Consent Decree for a period of thirty days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *City of Monterey Park, et al.,* D.J. Ref. 90–11–2–156F.

The proposed Consent Decree may be examined at the office of the United States Attorney, 300 North Los Angeles Street, Los Angeles, California 90012, and at the Region IX office of the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105. A copy of the proposed Consent Decree may also be examined at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (205) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $17.00 for a copy of the consent decree (25 cents per page reproduction costs, without any attachments or exhibits to the Decree) payable to ''Consent Decree Library.''

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–1279 Filed 1–18–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Glass Ceiling Commission: Open Meeting

Summary: Pursuant to Title II of the Civil Rights Act of 1991 (Pub. L. 102–166) and section 9 of the Federal Advisory Committee Act (FACA) (Pub. L. 92–462, 5 U.S.C. app. II) a Notice of establishment of the Glass Ceiling Commission was published in the Federal Register on March 30, 1992 (57 FR 10776). Pursuant to section 10(a) of FACA, this is to announce an open meeting of the Commission for Tuesday, January 31, 1995 from 4 pm—7 pm and Wednesday, February 1, 1995 from 1 pm—4 pm. The purpose of the Commission is to, among other things, focus greater attention on the importance of eliminating artificial barriers to the advancement of minorities and women to management and decisionmaking positions in business. The Commission has the practical task of: (a) Conducting basic research into practices, polices, and

manner in which management and decisionmaking positions in business are filled; (b) conducting comparative research of businesses and industries in which minorities and women are promoted or are not promoted; and (c) recommending measures to enhance opportunities for and the elimination of artificial barriers to the advancement of minorities and women to management and decisionmaking positions.

Time and Place: The meeting will be held on January 31, 1995, 4 pm—7 pm and February 1, 1 pm—4 pm (Eastern Standard Time) in the Department of Labor, Secretary's Conference Room S2508. The meeting is open to the public. This meeting will take the place of an earlier January 23rd and 24th meeting which had to be postponed.

The Commission will meet to discuss the status of the activities and tasks of the Commission.

The agenda for the meeting include:

Review of Perkins-Dole Application Process for 1995
Update on Research
Review of Report

Individuals with disabilities should contact Ms. René A. Redwood at (202) 219–7342 no later than January 27, 1995 if special accommodations are needed.

For Further Information Contact: Ms. René A. Redwood, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–2313, Washington, DC 20210, (202) 219–7342.

Signed at Washington, DC this 13th day of January 1995.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 95–1322 Filed 1–18–95; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

[TA–W–30,532]

Coordinated Apparel Group, Inc., Jackson, South Carolina; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 17, 1994 in response to a worker petition which was filed on behalf of workers at Coordinated Apparel Group, Incorporated, Jackson, South Carolina.

All workers of the subject firm are covered under amended certification (TA–W–30,364C). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 10th day of January 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–1323 Filed 1–18–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,410]

Hoechst Celanese Corp., Coventry, Rhode Island; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 10, 1994, applicable to all workers of the subject firm. The certification notice will soon be published in the Federal Register.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The findings show that a coverage overlap exists with TA–W–29,301 which was issued on March 4, 1994 for workers of the Intermediates I Building of Hoechst Celanese Corporation in Coventry, Rhode Island.

Accordingly, the Department is amending the certification to properly reflect the correct worker group.

The amended notice applicable to TA–W–30,410 is hereby issued as follows:

All workers of Hoechst Celanese Corporation in Coventry, Rhode Island, except those workers of Hoechst Celanese in the Intermediates I Building who are currently certified under TA–W–29,301, who became totally or partially separated from employment on or after October 3, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC., this 4th day of January 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–1324 Filed 1–18–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,342 Roosevelt, Utah; TA–W–30,342A Denver, Colorado]

Linmar Petroleum Co.; Revised Determination on Reconsideration

On December 13, 1994, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the former workers of the subject firm. The notice was published in the Federal Register on December 27, 1994 (59 FR 66559).

Investigation findings show that all production ceased on September 1, 1994 when all production workers were laid off.

U.S. imports of crude oil and natural gas increased absolutely and relative to domestic shipments in the first eight months of 1994 compared to the same period in 1993.

On reconsideration, the Department surveyed the subject firm's major declining customers for the relevant period. The survey findings show that customers accounting for a substantial portion of the subject firm's sales in 1994 increased their import purchases of crude oil while reducing their purchases from the subject firm.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the former workers of Linmar Petroleum Company in Roosevelt, Utah and Denver, Colorado were adversely affected by increased imports of articles like or directly competitive with the crude oil produced at the Linmar Petroleum Company.

All workers of Linmar Petroleum Company, in Roosevelt, Utah and Denver, Colorado who became totally or partially separated from employment on or after August 19, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 10th day of January 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–1325 Filed 1–18–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,367]

National Medical Care, Medical Products Division, a/k/a Erika of Texas, McAllen, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance applicable to all workers of the subject firm.

The certification notice was issued on December 10, 1994 and will soon be published in the Federal Register.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The investigation findings show many of the

workers of the Medical Products Division of National Medical Care has wages reported under Erika of Texas; consequently, their unemployment insurance (UI) taxes were paid to Erika of Texas.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–30,367 is hereby issued as follows:

''All workers of National Medical Care, Medical Products Division, also known as (a/k/a) Erika of Texas, McAllen, Texas who became totally or partially separated from employment on or after September 19, 1993 are eligible to apply for adjustment assistance under Section 223 of Trade Act of 1974.''

Signed at Washington, D.C., this 4th day of January 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–1326 Filed 1–18–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,065 Midland, Texas; TA–W–29,066 Houston, Texas]

Penetrators, Inc., Revised Determination on Reconsideration

The Department, on its own motion, has further considered the findings in the subject investigation. New findings in the investigation show that all of the Group Eligibility Requirements of the Trade Act are met.

The findings show that Penetrators, Inc., provides drilling services to unaffiliated production firms in the oil and gas industry.

The findings show substantial worker separations occurred in 1993 and the subject firm experienced a decline in revenues in 1993 compared to 1992.

U.S. imports of crude oil and natural gas increased in 1993 compared to 1992.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with crude oil and natural gas for which drilling services were performed by workers of Penetrators, Inc., in Midland and Houston, Texas contributed importantly to the decline in sales or production and to the total or partial separation of workers of the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Penetrators, Inc., in Midland, Texas and Houston, Texas who become totally or partially separated from employment on or after September 16, 1992 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 23rd day of December 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–1327 Filed 1–18–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,916 etc.]

Smith Equipment Co. Inc., Clifton, New Jersey, et al.; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

TA–W–29,916 Smith Equipment Company, Inc., Clifton, New Jersey and operating in the following States: TA–W–29,916A California, TA–W–29,916D Oregon, TA–W–29,916B Missouri, TA–W–29,916E Washington, TA–W–29,916C Ohio and TA–W–29,917 Smith Megapak, Inc., Clifton, New Jersey, and operating in the following States: TA–W–29,917A California, TA–W–29,917D Oregon, TA–W–29,917B Missouri, TA–W–29,917E Washington, TA–W–29,917C Ohio; amended certification regarding eligibility to apply for worker adjustment assistance.

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 2, 1994, applicable to all workers of the subject firm. The certification notice will soon be published in the Federal Register.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations occurred in the states of California, Missouri, Ohio, Oregon and Washington.

This amendment also corrects the location in the operative portion of the initial certification to Clifton, New Jersey instead of Clayton, New Jersey.

The intent of the Department's certification is to include all workers of Smith Equipment Company, Inc., and its operating subsidiary Smith Megapak, Inc., both located in Clifton, New Jersey.

The amended notice applicable to TA–W–29,916 and TA–W–29,917 is hereby issued as follows:

All workers of Smith Equipment Company, Inc., Clifton, New Jersey and operating in the following states of California, Missouri, Ohio, Oregon and Washington and all workers of Smith Megapak, Inc., Clifton, New Jersey and operating in the states of California, Missouri, Ohio, Oregon and Washington who became totally or partially separated from employment on or after May 16, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1994.

Signed at Washington, DC, this 4th day of January, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–1328 Filed 1–18–95; 8:45 am]

BILLING CODE 4510–30–M

Occupational Safety and Health Administration

Utah State Standards; Notice of Approval

Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On January 10, 1973, notice was published in the Federal Register (38 FR 1178) of the approval of the Utah State Plan and the adoption of Subpart E to Part 1952 containing the decision. Utah was granted final approval on Section 18(e) of the Act on July 16, 1985. By law (Section 63–46a–16 Utah Code), the Utah Administrative Rulemaking Procedure is the authorized compilation of the administrative law of Utah and ''shall be received in all the courts, and by all judges, public officers, commissioners, and departments of the State government as evidence of the administrative law of the State of Utah * * *'' The Utah Occupational Safety and Health Division revised its Administrative Rulemaking Act) Chapter 46a, title 63, Utah annotated, 1953) which became effective on April 29, 1985, a State Plan Supplement was submitted to the Occupational Safety and Health Administration (OSHA) for approval and publication in the Federal Register of Utah's revised Administrative Rulemaking Act. The Plan supplement was published in the Federal Register (53 FR 43688) on October 28, 1988. The supplement

provides for adoption of Federal standards by reference through the publication of standards in the Utah State Digest. Utah now adopts Federal OSHA standards by reference using the OSHA numbering system.

Following the publication date, the agency shall allow at least 30 days for public comment on the rule. During the public comment period the agency may hold a hearing on the rule. Except as provided in statutes 63–46a–6 and 63–46a–7, a proposed rule becomes effective on any date specified by the agency which is no fewer than 30 nor more than 90 days after the publication date. The agency shall provide written notification of the rule's effective date to the office. Notice of the effective date shall be published in the next issue of the bulletin.

OSHA regulations (29 CFR 1953.22 and .23) require that States respond to the adoption of new or revised permanent Federal Standards by State promulgation of comparable standards within six months of OSHA publication in the Federal Register, and within 30 days for emergency temporary standards. Although adopted State Standards or revisions to Standards must be submitted for OSHA review and approval under procedures set forth in part 1953, they are enforceable by the State prior to Federal review and approval.

The State submitted statements along with copies of the Utah State Digest, to verify the adoption of standards by reference from the Code of Federal Regulations. The adoption by reference standards actions occurred as follows:

1. The Utah Occupational Safety and Health Administration on May 14, 1994, published for adoption by reference the revised as of July 1, 1993 edition of 29 CFR part 1910 (General Industry) and 29 CFR part 1926 (Construction). The effective date of the action was May 15, 1994.

2. The Utah Occupational Safety and Health Division adopted by reference on January 31, 1994, the new Federal Standard Electrical Power Generation, Transmission and Distribution; Electrical Protective Equipment; Final Rule as published in 59 FR 4320. The effective date of the State Rule is June 14, 1994.

Decision

The Statement of incorporation of the aforementioned Federal Standards by reference has been printed in the Utah Administrative 1990 code. The code contains the statement of the incorporation of Federal Standards by reference as compiled by the Occupational Safety and Health Division of the Industrial Commission of Utah. Copies of the Utah Administrative Code have been reviewed and verified at the Regional Office. OSHA has determined that the Federal Standards incorporated by reference form 29 CFR part 1910 and 29 CFR part 1926 are identical to Federal Standards and therefore approves the Utah Standards.

Location of Supplement for Inspection and Copying

A copy of the standards along with the approved plan may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 1999 Broadway, Suite 1690 Denver, Colorado 80202–5716; Utah State Industrial Commission, UOSH offices at 160 East 300 South, Salt Lake City, Utah 84151; and the Director of Federal-State Operations, room N3700, 200 Constitution Avenue, NW., Washington, DC 20210.

Public Participation

Under 29 CFR 1953.2(C), the Assistant Secretary may prescribe alternative procedures, or show any other good cause consistent with applicable laws, to expedite the review process. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Utah State Plan as a proposed change and makes the Regional Administrator's approval effective upon publication for the following reason(s): The Standards were adopted in accordance with the procedural requirements of State law which include public comment, and further participation would be repetitious. This decision is effective September 22, 1994.

Authority: SEC. 18, Public Law 91–596, 84 Stat. 1608 (29 U.S.C. 667) Signed at Denver, Colorado this 22nd day of September, 1994.

Harry C. Borchelt,

Assistant Regional Administrator, VIII.

[FR Doc. 95–1329 Filed 1–18–95; 8:45 am]

BILLING CODE 4510–26–M

Wyoming State Standards; Notice of Approval

Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a state Plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On May 3, 1974, notice was published in the Federal Register (39 FR 15394) of the approval of the Wyoming Plan and adoption of Subpart BB to Part 1952 containing the decision.

The Plan provides for the adoption of Federal Standards as State Standards By: (1) Advisory Committee coordination; (2) Publication in newspapers of general/major circulation with a 45-day waiting period for public comment and hearings; (3) Adoption by the Wyoming Health and Safety Commission; (4) Review and approval by the Governor; (5) Filing with Secretary of State and designation of an effective date.

OSHA regulations (29 CFR 1953, 22 and 23) require that States respond to the adoption of new or revised permanent Federal Standards by State promulgation of comparable standards within six months of OSHA publication in the Federal Register, and within 30 days for emergency temporary standards. Although adopted State Standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in Part 1953, they are enforceable by the State prior to Federal review and approval.

By letter received May 1, 1994 from Stephan R. Foster. OSHA Program Manager, Wyoming Department of Employment, Division of Employment Affairs-OSHA to Byron R. Chadwick, OSHA Regional Administrator, the State submitted rules and regulations in response to the following General Industry Standards, 29 CFR 1910.1000 Air Contaminants Rule 58 FR 35340, 6/30/93; 29 CFR 1910.1001 Asbestos (revision) 57 FR 24330, 29 CFR 1910.1048 Occupational Exposure to Formaldehyde Final Rule (amendments) 57 FR 22307, 6/27/92; 29 CFR 1910.1027 Occupational Exposure to Cadmium Final Rule, 57 FR 42389, 29 CFR 1910.146 Permit-Required confined Space, 58 FR 4549 29 CFR 1910.1450 Occupational Exposure to Hazardous Chemicals in Laboratories (correction) 57 FR 29204 7/1/92; and 29 CFR 1910.1050 Occupational Exposure to 4,4,Methylenedianiline (MDA) Final rule 57 FR 35666 8/10/92.

The above adoptions of federal standards have been incorporated in the State Plan and are contained in the Wyoming Occupational Health and Safety Rules and Regulations (General),

as required by Wyoming Statute 1977, Section 27–11–105 (a) (viii).

State Standards for 29 CFR 1910.1000 Air Contaminants corrections; was adopted by the Health and Safety Commission of Wyoming on November 19, 1993 (effective 1/4/94); State Standards for 29 CFR 1910.1001 Asbestos revision; was adopted 8/14/92 (effective 10/13/92); State standards for 29 CFR 1910.1048 Occupational Exposure to Formaldehyde Final Rule Amendments was adopted 8/14/92 (effective 10/13/92); State Standards for 29 CFR 1910.1027 Occupational Exposure to Cadmium Final Rule corrections adopted 2/19/93 (effective 4/12/93); State Standard for 29 CFR 1910.146 Permit-required Confined Space adopted 5/21/93 (effective 7/22/93); State Standard for 29 CFR 1910.1450 Occupational Exposure to Hazardous Chemicals in Laboratories correction was adopted 11/06/92 (effective 1/4/93); State Standards for 29 CFR 1910.1050 Occupational Exposure to 4,4, Methylenedianiline (MDA) Final Rule amendments was adopted 11/6/92 (effective 1/4/93).

Decision

The above State Standards have been reviewed and compared with relevant Federal Standards, and OSHA has determined that the State Standards are at least as effective as the comparable Federal Standards, as required by Section 18(c)(2) of the Act. OSHA has also determined that the differences between the State and Federal Standards are substantially identical. OSHA therefore approves these Standards. However, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

Location of Supplement for Inspection and Copying

A copy of the Standards Supplements, along with the approved Plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 1999 Broadway Suite 1690, Denver, Colorado 80202–5716; the Department of Employment, Division of Employment Affairs-OSHA, Herschler Building, 2nd Floor East, 122 West 25th Street, Cheyenne, Wyoming 82002; and the Office of State Programs, Room N–3700, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures, or show any other good cause consistent with applicable laws, to expedite the review process. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Wyoming State Plan as a proposed change and makes the Regional Administrator's approval effective upon publication for the following reason(s): The standards were adopted in accordance with the procedural requirements of State Law which include public comment, and further public participation would be repetitious. This decision is effective January 19, 1995 (Sec. 18, Public Law 91–596, 84 Stat. 1608 [29 U.S.C. 6671].)

Signed at Denver, Colorado this 9th day of September, 1994.

Gregory J. Baxter,

Deputy Regional Administrator, VIII.

[FR Doc. 95–1330 Filed 1–18–95; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Public Meeting With Interested Vendors on a Proposal for Ordering Reproductions of Still Photographs, Aerial Film, Maps, and Drawings

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of meeting and action.

SUMMARY: NARA announces its intent to change procedures for providing reproductions of archival still photographs, aerial film, maps, and drawings from the Still Picture Branch, Cartographic and Architectural Branch, and other units of the National Archives. An initial meeting with interested vendors was held on December 21, 1994. The proposal will privatize the reproduction of these archival materials by allowing customers to place their orders directly with vendors. In addition, NARA will assign work space to the vendors in its new building in College Park, MD, in order that the materials can be copied on its premises. The proposed procedures, scheduled to begin on March 6, 1995, and continue for a one-year trial period, are intended to expedite the reproduction ordering process and to ascertain the extent to which digital scanning can satisfy customer requirements. All vendors interested in this test are invited to attend the next scheduled meeting.

DATES: The meeting will be held on Wednesday, January 25, 1995, at 10 a.m.

The trial period is proposed to begin on March 6, 1995, and end on March 6, 1996.

ADDRESSES: The meeting will be held in Archives II, lecture rooms C and D, located at 8601 Adelphi Road, College Park, MD.

FOR FURTHER INFORMATION CONTACT: William T. Murphy, Nontextual Archives Division, at 301–713–7083.

Dated: January 11, 1995.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 95–1368 Filed 1–18–95; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–160–Ren; ASLBP No. 95–704–01–Ren]

Georgia Institute of Technology, Atlanta, Georgia; Georgia Tech Research Reactor (Renewal of Facility License No. R–97); Notice of Prehearing Conference

January 12, 1995.

This proceeding concerns the proposed renewal of the facility operating license for the Georgia Tech Research Reactor, located on the campus of the Georgia Institute of Technology in Atlanta, GA. Notice is hereby given that, as set forth in the Atomic Safety and Licensing Board's Memorandum and Order (Telephone Conference Call, 1/10/95), dated January 11, 1995, a prehearing conference will be conducted commencing at 10:00 a.m. on Tuesday, January 31, 1995 and continuing, to the extent necessary, on February 1 and 2, 1995, commencing at 9:00 a.m. each day, at the Federal Trade Commission Hearing Room, Room 1010, 1718 Peachtree St. NW., Atlanta, GA.

At the conference, the Licensing Board will consider the Petition for Leave to Intervene, dated October 26, 1994, and the Amended Petition for Leave to Intervene, dated December 30, 1994, filed by the Georgians Against Nuclear Energy (GANE), including GANE's standing and each of its proffered contentions. The Board will also consider potential scheduling for various aspects of the proceeding, should the Board determine that a hearing is to be authorized. Members of the public are invited to attend this conference, but they may not participate except as set forth below (with respect to oral limited appearance statements).

Persons who are not parties to the proceeding are invited to submit limited appearance statements, either in writing or orally, with regard to the renewal application, as permitted by 10 CFR 2.715(a). These statements do not constitute testimony or evidence in

these proceedings but may help the Board and/or parties in their deliberations as to the proper boundaries of the issues to be considered. During this prehearing conference, such persons may make oral limited appearance statements, on Wednesday morning, February 1, 1995, from 9:00 a.m. to 11:00 a.m. If more persons than can be accommodated during this period wish to make statements, and to the extent that time may be available after the conclusion of the substantive portions of the conference, the Board may elect to hear additional statements. Written statements, or requests to make oral limited appearance statements, should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington D.C. 20555, Attn: Docketing and Service Branch. A copy of such statement or request should be served on the Chairman of this Atomic Safety and Licensing Board, T3 F23, U.S. Nuclear Regulatory Commission, Washington D.C. 20555.

Documents relating to this proceeding are available for public inspection at the Commission's Public Document Room, 2120 L St. N.W., Washington D.C. 20555.

For the Atomic Safety and Licensing Board.

Charles Bechnoefer,

Chairman Administrative Judge.

[FR Doc. 95–1271 Filed 1–18–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35221; File No. S7–24–89]

Joint Industry Plan; Order Approving Amendment No. 2 to Reporting Plan for Nasdaq/National Market Securities Traded on an Exchange on an Unlisted or Listed Basis, Submitted by the National Association of Securities Dealers, Inc., and the Boston, Chicago and Philadelphia Stock Exchanges

January 11, 1995.

On January 9, 1995, the National Association of Securities Dealers, Inc., and the Boston, Chicago, and Philadelphia Stock Exchanges (collectively, ''Participants'')[1] submitted to the Commission Amendment No. 2 to a joint transaction reporting plan (''Plan'') for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis.[2] The Commission is approving the proposed amendment to the Plan and trading pursuant to the Plan on a temporary basis to expire on August 12, 1995. The Commission also is soliciting comment, among other matters, on whether exchanges should be permitted to extend UTP to more than 100 OTC securities at any given time.

I. Extension of the Pilot Program

The Commission originally approved the Plan on June 26, 1990.[3] The Plan governs the collection, consolidation and dissemination of quotation and transaction information for Nasdaq/National Market securities listed on an exchange or traded on an exchange pursuant to UTP. The Commission originally approved trading pursuant to the Plan on a one-year pilot basis, with the pilot period to commence when transaction reporting pursuant to the Plan commenced. Thereafter, the Commission extended the effectiveness of the Plan through January 12, 1995, as requested by the Participants in Amendment No. 1 to the Plan.[4] Accordingly, the pilot period commenced on July 12, 1993, and most recently was scheduled to expire on January 12, 1995.

As originally approved by the Commission, the Plan required the Participants to complete their negotiations regarding revenue sharing during the one-year pilot period. The Participants, however, have not yet come to an agreement concerning revenue sharing for transactions effected pursuant to the Plan. Proposed Amendment No. 2 to the Plan extends this negotiation period for an additional seven months.[5] The Commission believes it is appropriate to extend the effectiveness of the pilot program, particularly in light of the reported recent progress made by the Participants concerning financial matters. At the same time, however, the Commission expects the Participants to conclude those negotiations before January 31, 1995, and expects the Participants to submit to the Commission a proposed amendment to the Plan concerning finances before February 15, 1995.

II. Extension of Certain Exemptive Relief

In conjunction with the Plan, on a temporary basis scheduled to expire on July 12, 1995, the Commission granted an exemption from Rule 11Ac1–2 under the Act regarding the calculated best bid and offer (''BBO''), and granted the BSE an exemption from the provision of Rule 11Aa3–1 under the Act that requires transaction reporting plans to include market identifiers for transaction reports and last sale data. At the request of the Participants, this order extends these exemptions through August 12, 1995, provided that the Plan continues in effect through that date pursuant to a Commission order.[6] The Commission continues to believe that exemptive relief from these provisions is appropriate through August 12, 1995, but at that time, the Commission will

[1] The signatories to the Plan, i.e., the National Association of Securities Dealers, Inc. (''NASD''), and the Chicago Stock Exchange, Inc. (''Chx'') (previously, the Midwest Stock Exchange Inc.), Philadelphia Stock Exchange, Inc. (''Phlx''), and the Boston Stock Exchange, Inc. (''BSE''), are the ''Participants.'' The BSE, however, joined the Plan as a ''Limited Participant,'' and reports quotation information and transaction reports only in Nasdaq/National Market (previously referred to as ''Nasdaq/NMS'') securities listed on the BSE. Originally, the American Stock Exchange, Inc., was a Participant to the Plan, but did not trade securities pursuant to the Plan, and withdrew from participation in the Plan in August 1994.

[2] The Commission notes that Section 12(f) of the Act describes the circumstances under which an exchange may trade by security that is not listed on the exchange, i.e., by extending unlisted trading privileges (''UTP'') to the security. Section 12(f) was amended on October 22, 1994, 15 U.S.C. 12(f) (1991) (as amended 1994). Prior to the amendment, Section 12(f) required exchanges to apply to the Commission before extending UTP to any security. In order to approve an exchange UTP application for a registered security not listed on any exchange (''OTC/UTP''), Section 12(f) required the Commission to determine that various criteria had been met concerning fair and orderly markets, the protection of investors, and certain national market initiatives. These requirements worked in conjunction with the Plan currently under review. The recent amendment to Section 12(f), among other matters, removes the application requirement and permits OTC/UTP only pursuant to a Commission order or rule. The order or rule is to be issued or promulgated under essentially the same standards that previously applied to Commission review of UTP applications. The present orders serves to meet this Section 12(f) requirement.

[3] *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (''1990 Approval Order''). For a detailed discussion of history of UTP in OTC securities, and the events that led to the present plan and pilot program, *see* 1994 Extension Order, *infra* note 4.

[4] See Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103 (''1994 Extension Order'').

[5] In the present filing with the Commission, the NASD states that the parties have made substantial progress in their negotiations but have not concluded them and that, in order to conclude the negotiations and provide sufficient time for approval by their governing boards and the Commission, the parties believe that an additional seven months will be required. See letter from T. Grant Callery, Vice President and General Counsel, NASD, to Jonathan G. Katz, Secretary, Commission, dated January 9, 1995.

[6] The Commission notes that the present filing does not make clear that the two exemptions were previously scheduled to expire on July 12, 1995. Nevertheless, the filing requests an ''identical extension'' of the relevant exemptions along with their request that the effectiveness of the Plan be extended through August 12, 1995. Accordingly, this order extends the effectiveness of the relevant exemptions from July 12, 1995, through August 12, 1995. See id.

review the exemptive relief in light of any comments received.

III. Outstanding Issues

In the 1994 Extension Order, the Commission noted several areas of unresolved issues concerning the Plan.[7] These issues include, among other matters, whether the Commission should continue to limit the number of OTC securities that may be traded on exchanges pursuant to UTP. Currently, exchanges may extend UTP up to a maximum of 100 securities.[8] To date, the Commission has solicited comment on this and other matters and has not received evidence that expanding the number of securities would have a negative effect on the markets or the protection of investors. Moreover, the Commission recently received a letter from the Chx requesting that the Commission expand the number of eligible securities from 100 to 500.[9]

Accordingly, the Commission solicits comment specifically on whether it is appropriate to permit exchanges to extend UTP to a maximum of 500 OTC securities for an interim period, and whether all NNM securities should be available for extensions of UTP if the Commission determines that permanent approval of the Plan is appropriate. The Commission preliminarily believes that, after consideration of comments received, it may be appropriate to expand the number of eligible securities prior to the Commission's review of other matters associated with the Plan in August 1995.

The Commission also notes other areas for commenters to address: (1) Whether the BBO calculation for the relevant securities should be based on price and time only (as currently is the case) or if the calculation should include size of the quoted bid or offer; and (2) whether there is a need for an intermarket linkage for order routing and execution and an accompanying trade-through rule.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. All submissions should refer to File No. S7–24–89 and should be submitted by February 9, 1995.

VI. Conclusion

The Commission finds that proposed Amendment No. 2 to the Plan to extend the financial negotiation period for an additional seven months is appropriate and in furtherance of Section 11A of the Act. The Commission also finds that extensions of the exemptive relief requested through August 12, 1995, and described above, also is consistent with the Act and the rules thereunder. Specifically, the Commission believes that these extensions should serve to provide the Participants with more time to conclude their financial negotiations and to evaluate the effects of the pilot program and report their findings to the Commission. This, in turn, should further the objects of the Act in general, and specifically those set forth in Section 12(f) and 11A of the Act and in Rules 11Aa3–1 and 11Aa3–2 thereunder.

It is therefore ordered, pursuant to Sections 12(f) and 11A of the Act and paragraph (c)(2) of Rule 11Aa3–2 thereunder, that Amendment No. 2 to the Joint Transaction Reporting Plan for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis is hereby approved, and trading pursuant to the Plan is hereby approved on a temporary basis through August 12, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(29).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–1230 Filed 1–18–95; 8:45 am]

BILLING CODE 8010–01–M

[7] In the 1994 Extension Order, the Commission requested views on numerous issues presented by the pilot program, and requested that the Participants submit reports to the Commission on those issues by September 30, 1994. See *Supra* note 4. The Commission received a report from the Philadelphia Stock Exchange as an attachment to its proposed rule change requesting an extension of the Phlx's pilot procedures for OTC/UTP. See letter from William W. Uchimoto, General Counsel, Phlx, to Elizabeth Prout, Division of Market Regulation, Commission, dated December 21, 1994 (attachment to File No. SR–PHLX–94–70). The other Participants have not complied with the Commission order, and must respond to the Commission request immediately.

[8] Prior to 1985, the Commission generally did not permit exchanges to extend UTP to OTC securities. In 1985, the Commission determined that it would be appropriate to permit exchanges, on a temporary basis and subject to certain limitations, to extend UTP up to a maximum of 25 OTC securities. These limitations included the requirement that the NASD and exchanges seeking to extend UTP to OTC securities enter into a plan for consolidated transaction and quotation dissemination. See Securities Exchange Act Release No. 22412 (September 16, 1985), 50 FR 38640. In 1986, the Midwest Stock Exchange (currently the Chicago Stock Exchange, or ''Chx'') entered into an interim plan which subsequently was superseded by the Plan currently operating on a pilot basis. In 1990, the Commission expanded the maximum number of eligible securities to 100. See 1990 Approval Order, *supra* note 3.

[9] See letter from George T. Simon, Foley & Lardner, to Katherine England, Assistant Director, Commission, dated January 9, 1995. This letter also concludes that, when the Plan is finally approved, all NNM stocks would be eligible for trading.

[Release No. 34–35211; File Nos. SR–Amex–94–12, SR–CBOE–94–27; and SR–PSE–94–23]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the American Stock Exchange, Inc., the Chicago Board Option Exchange, Inc., and Pacific Stock Exchange, Inc.; Relating to Short Sales of Nasdaq/NM Securities of Companies Involved in a Merger or Acquisition

January 10, 1995.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] on October 14, 1994, the American Stock Exchange, Inc. (''Amex''), on August 4, 1994, the Chicago board Options Exchange, Inc. (''CBOE''), and on August 8, 1994, the Pacific Stock Exchange, Inc. (''PSE''), respectively (each individually referred to herein as an ''Exchange'' and two or more collectively referred to as ''Exchange''), submitted to the Securities and Exchange Commission (''Commission'') proposed rule changes relating to extending the market maker exemption from the NASD's short sale rule to Nasdaq National Market (''Nasdaq/NM'' or ''NM'') securities involved in merger and acquisition (''NSA'') transactions. On September 29, 1994, the CBOE filed Amendment No. 1 to its proposal,[3] and on October 14, 1994, the PSE filed Amendment No. 1 to its proposal.[4] The

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] In Amendment No. 1, the CBOE adds the requirement that for a short sale in a Nasdaq/NM security involved in an M&A to qualify as an exempt hedge transaction pursuant to the current proposal, the M&A must be publicly announced. See letter from Michael L. Meyer, Schiff Hardin & Waite, to Francois Mazur, Attorney, Division of Market Regulation (''Division''), Commission, dated September 29, 1994 (''CBOE Amendment No. 1'').

[4] In Amendment No. 1, the PSE adds the requirement that for a short sale in a Nasdag/NM

Continued

Amex, CBOE, and PSE proposals were each published for comment in the Federal Register on November 21, 1994.[5] No comments were received on the proposed rule changes. This order approves the Exchanges' proposals, as amended.

II. Description of Proposals

The Commission recently approved proposals submitted by the options exchange concerning a market maker exemption [6] to the NASD bid test rule [7] applicable to short sales to NM securities traded through Nasdaq. The purposes of the market maker exemption is to allow options market makers [8] to hedge their options positions by buying or selling (including selling short) shares of underlying stock or underlying component stocks contained in stock indexes; such short sales are referred to as ''exempt hedge transactions.'' [9] The Exchange' proposals were approved on a temporary basis to remain in effect concurrently with the NASD's bid test rule pilot program.[10]

Currently, the NASDA provides an exemption from the short sale bid test for risk arbitragers (and other NASD members) who take positions in the stocks involved in M&G transactions.[11] Consequently, the Exchange desire to amend their respective rules to extend the market maker exemption from the bid test rule to certain short sales of the stock of a company that is involved in a publicly announced M&A with a company whose stock is a designated Nasdaq/NM security.[12]

III. Discussion

The Commission believes that the Exchanges' proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. In particular, the Commission believes the Exchanges' proposals are consistent with the requirements of Section 6(b)(5) of the Act [13] in that they are designed to remove impediments to, and perfect the mechanism of, a free and open market, and to protect investors and the public interest.

The Commission approved the NASD's short sale rule proposal on June 29, 1994,[14] and in so doing stated that the short sale rule, together with the market maker exemption, is a reasonable approach to regulating short sales of Nasdaq/NM securities. The Commission believes that the Exchanges' proposals are consistent with the NASD's bid test rule and address the limitations established by the NASD concerning the applicability of the market maker exemption.

Specifically, the Exchanges' proposals are designed to extend the market maker exemption to the stock of a company that is involved in a publicly announced M&A with a company whose stock is designated Nasdaq/NM security. The Commission believes that when a designated Nasdaq/NM security becomes involved in an M&A, options market makers may need to hedge positions in options overlying such a designated Nasdaq/NM security by buying or selling the securities of the other company involved in the M&A, whether or not the other company's stock has listed overlying options. Indeed, where there are no options on the other company's stock, buying or selling that company's stock at times may be the only feasible way for a market maker to hedge positions in options on the designated Nasdaq/NM security, given the risk arbitrage relationship that is likely to exist between the two stocks. Therefore, the Commission believes that by allowing market makers to sell short, for hedging purposes, shares of a company that is involved in an M&A with a company whose stock is a designated Nasdaq/NM security, and to designate such sales as bid test exempt, the Exchanges' proposals will enhance the ability of their market makers perform their market making functions, thereby contributing to the liquidity of the market for options, as well as to the liquidity of the market for the stocks of both companies.

The Commission notes that the proposed extension of the market maker exemption from the short sale rule is limited to publicly announced M&As. Moreover, market makers may avail themselves of the M&A extension to the exemption only when the short sales are made to hedge existing or prospective positions in options on a security of another company involved in the M&A, the options positions are or will be in a class of options for which the market maker is registered and are or will be an ''exempt hedge transaction'' as defined in the Exchanges' rules.[15]

IV Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the Amex, CBOE, and PSE proposed rule changes (SR–Amex–94–42, SR–CBOE–94–27, and SR–PSE–94–23, respectively), as amended, are approved on a temporary basis, to remain in effect so long as their respective rules regarding the market maker exemption [17] to the NASD's bid test rule remain in effect.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–1281 Filed 1–18–95; 8:45 am]

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security involved in an M&A to qualify as an exempt hedge transaction pursuant to the current proposal, the M&A must be publicly announced. See letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Francois Nazur, Attorney, Division, Commission (''PSE Amendment No. 1''). The Commission notes that the Amex proposal, as originally proposed requires the M&A to be publicly announced.

[5] See Securities Exchange Act Release Nos. 34971 (November 14, 1994), 59 FR 60027 (Amex); 34972 (November 14, 1994), 59 FR 60028 (CBOE); and 34970 (November 14, 1994), 59 FR 60029 (PSE).

[6] Securities Exchange Act Release No. 34632 (September 2, 1994), 59 FR 46999 (approving proposals by the Amex, CBOE, New York Stock Exchange, Inc., PSE, and Philadelphia Stock Exchange, Inc.).

[7] The NASD bid test rule prohibits broker-dealers from effecting short sales, for themselves or their customers, at or below the ''bid'' when the current ''inside'' or best bid is below the previous inside bid. NASD Rules of Fair Practice (''NASD Rules''), Art. III, Section 48. See Securities Exchange Act. Release No. 34277 (June 6, 1994), 59 FR 34885 (amending the NASD Rules to add the short sale rule).

[8] For purposes of this order, a ''market Maker'' is a Market Maker as referred to in the CBOE and PSE Rules, and a Specialist or Registered Options Trader as referred to in the Amex Rules.

[9] An ''exempt hedge transaction'' is a short sale in an NM security effected to hedge, and which in fact serves to hedge, an existing offsetting options positions or an offsetting contemporaraneous with the short sale. See Amex Rule 957(d)(2)(b)(ii), CBOE Rule 15.10(c)(2)(iii)(A), and Rule 4.19(c)(2)(B)(9).

[10] See Securities Exchange Act Release No. 34277, *supra* note 6. The Commission approved the NASD's short sale rule on an eighteen month temporary basis, effective September 6, 1994, through March 5, 1996. *Id.*

[11] See Securities Exchange Act Release No. 34277, *supra* note 7. The NASD short sale rule states that once an M&A has been two affected securities may immediately reguister as a qualified market maker in the other M&A security. See NASD Rules, Article III, 48(1)(3)(iii). Consequently, such a market maker may relay on the market maker exemption for short sales of the other M&A security.

[12] Proposed Rule 957(d)(2)(b)(iv); Proposed CBOE Rule 15.10(a)(2)(ii)(D); and Proposed PSE Rule 4.19(c)(2)(B)(iv). A ''designated NM security'' is an NM security which the market maker has designated as qualifying for the bid test exemption. See *e.g.*, CBOE Rule 15.10(c)(2)(B).

[13] 15 U.S.C. 78f(b)(5) (1988).

[14] Securities Exchange Act Release No. 34277, *supra* note 7.

[15] See supra note 9.

[16] 15 U.S.C. 78s(b)(2) (1982).

[17] Amex Rule 957, CBOE Rule 15.10, and PSE Rule 4.19.

[18] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–35220; File No. SR–CBOE/94–48]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc.; Relating to the Placement of CBOE Memberships in Trust

January 11, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 1, 1994, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to adopt a new Rule 3.25 that would enable an individual CBOE member to place his membership in trust for estate planning purposes, subject to certain conditions and requirements.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of an basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to include in CBOE's membership rules a new Rule 3.25 that would enable any individual member to place his membership in trust, subject to various conditions and requirements set forth in the rule. Rule 3.25 is designed to make the membership transfer process simple for members and for the Exchange and is structured to correlate the substance and mechanics of the new rule with CBOE's existing rules, including, for example, CBOE's rules respecting sales and leases of memberships and transfers of memberships to family members.

The Exchange believes that the proposed rule change will provide members with useful, but appropriately controlled, estate planning flexibility. For example, the proposal will permit a member who has placed his membership in trust to provide for the appointment of a successor trustee in the event of the member's disability. The successor trustee would then hold the membership for the benefit of the member during the disability period, provided the membership is leased during that period in accordance with CBOE's membership lease rules.

Specifically, the proposed rule change would provide that an individual member in good standing may, during his lifetime, transfer his membership to a trust for which he is the sole trustee and sole present beneficiary. Under paragraph (c) of proposed Rule 3.25 a member who has placed his membership in trust (''Trust Member'') may transfer his membership, in accordance with the provisions of Rule 3.14(c)(1), to an eligible family member who is approved for Exchange membership, or, in accordance with Rule 3.14(c)(3), to a member organization. Any such transfer must conform to the collateral deposit requirements of the final sentence in Rule 3.14(c). In addition, the proposed rule change provides that a Trust Member may transfer his membership from the trust to himself to be held directly.

Paragraph (b) of the proposed rule change would authorized a Trust Member to provide in his trust agreement for the appointment of a successor trustee in the event the Trust Member dies, is declared legally incompetent, or becomes disabled. A successor trustee could be so appointed for one of two purposes only—either to effect a transfer of the membership after the member's death in accordance with the Exchange's membership transfer rules, or, to retain the membership in trust for the benefit of an incompetent or disable Trust Member, provided the membership is leased in accordance with Exchange Rule 3.16(b) (''Leased Memberships'').

Any transfer of a membership into trust would be subject to Exchange review. Under paragraph (d) of proposed Rule 3.25, a member seeking to effect such a transfer must furnish the Exchange with a copy of the trust agreement together with an attorney's certification that the agreement conforms to the requirements of the new rule. The Exchange may disapprove a transfer by written notice to the member if the Exchange finds that the trust agreement does not so conform. In addition, the new rule specifies that, notwithstanding a transfer into trust, the membership must remain subject to all Exchange rules, and the Trust Member must remain personally responsible for all obligations and liabilities associated with use of the membership.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act and with Section 6(b)(1) of the Act in particular in that it is designed to enable the Exchange to enforce members' compliance with Exchange rules and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number in the caption above and should be submitted by February 9, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–1282 Filed 1–18–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35217; File No. SR–NASD–94–70]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Consolidation of the Level 1 and Last Sale Information Services and Subscriber Fees

January 11, 1995.

On December 1, 1994, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The rule change will effectuate a consolidation of the Nasdaq Level 1 and Last Sale Information services and of the corresponding subscriber charges. The rule change modifies Sections A (1) and (5) of Part VIII of Schedule D to the NASD By-Laws.

Notice of the proposed rule change, together with its terms of substance was provided by issuance of a Commission release[3] and by publication in the Federal Register.[4] No comments were received in response to the notice. This order approves the proposed rule change.

This rule change establishes a single service offering comprised of the existing Nasdaq Level 1 (''Level 1'') quotation and last sale (''last sale'') information services. The monthly charge to be levied for the consolidated service will be $19/terminal, the sum of the monthly charges previously assessed for receipt of the last sale and Level 1 services on an authorized terminal device.[5] The combined service will be distributed by commercial vendors of market data for which their subscribers will pay a single monthly charge.

The Commission has determined to approve the NASD's proposal. The Commission finds that the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of Section 15A(b)(5) of the Act.[6] Section 15A(b)(5) requires, in part, that the rules of a national securities association provide for the equitable allocation of reasonable dues, fees and other charges among members, issuers and other persons using any facility or system that the Association operates or controls. While the consolidation will result in a fee increase for a small portion of subscribers, the additional cost will be partially offset by administrative savings for large subscribers and vendors. Moreover, the rule will effect a simplification in the fee structure applicable to receipt of two major data services.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change SR–NASD–94–70 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–1229 Filed 1–18–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20832; 812–9208]

Brandes International Fund, et al.; Notice of Application

January 12, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Brandes International Fund (the ''Company''), Brandes Investment Partners, Inc. (the ''Adviser''), and First Fund Distributors, Inc. (the ''Distributor'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act to grant an exemption from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act, and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order to permit the Funds to issue multiple classes of shares representing interests in the same portfolio of securities and assess and, under certain circumstances waive, a contingent deferred sales charge (''CDSC'') upon the redemption of certain shares.

FILING DATES: The application was filed on October 7, 1994 and amended on December 14, 1994. Applicants agree to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 6, 1995, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants: Brandes International Fund, Brandes Investment Partners, Inc., 12750 High Bluff Drive, Suite 420, San Diego, California 92130; First Fund Distributors, Inc., 4455 E. Camelback Rd., Suite 261E, Phoenix, AZ 85018.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Company is a registered open-end management investment company organized as a Delaware business trust. The Company currently has one series. It does not propose to offer or sell shares until the issuance of the order requested

[1] 17 CFR 200.3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 35054 (December 6, 1994).

[4] 59 FR 64225 (December 13, 1994).

[5] The rule change will result in higher fees, however, for some Level 1 subscribers who do not currently pay for receipt of last sale data.

[6] 15 U.S.C. 78*o*–3(b)(5).

[7] 17 CFR 200.30–3(a)(12).

in this application. The Company has entered into an investment advisory agreement with the Adviser pursuant to which the Adviser will provide investment management and advisory services to the Funds. The Company has also entered into a principal underwriting agreement with the Distributor. Investment Company Administration Corporation serves as administrator to the Company. Applicants request that relief extend to the Company, its present series, and any other series (the ''Funds'') that may in the future be advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser.

2. The Company has adopted a distribution plan pursuant to rule 12b–1 under the Act (the ''Rule 12b–1 Plan''). The Company has also adopted a non-rule 12b–1 shareholder service plan (the ''Service Plan''). Applicants propose to establish a multi-class distribution system. Under the multi-class distribution system, each Fund will have the opportunity to provide investors with the option of purchasing shares: (1) With a conventional front-end sales load, a distribution fee and/or a service fee (''Class A shares'' or the ''Front-End Load Option''); and (b) subject to a CDSC and a distribution fee and/or a service fee (''Class C shares'' or the ''Deferred Option''). The front-end sales load for Class A shares will be subject to reductions for larger purchases, and a CDSC for redemptions of certain purchases.

3. Each Fund also may create additional classes of shares. The only differences among the classes will relate solely to: (a) the designation of each class of shares of the Fund; (b) the exclusive right of each class of shares to vote on matters related to the Fund's Rule 12b–1 Plan and/or Service Plan; (c) the impact of the disproportionate payments made under the Plans; (d) Class Expenses, as set forth in condition 1; (e) each class of shares would have different exchange privileges; and (f) each class of shares might have different rights of conversion into other classes.

4. All expenses incurred by a Fund will be allocated to each class of its shares based upon the relative daily net assets of the class. Rule 12b–1 Plan payments, Service Plan payments, and Class Expenses which may be attributable to a particular class of shares of a Fund will be charged directly to the net assets of the particular class. Because of the higher fees paid by the holders of certain classes, the net income attributable to and the dividends payable on shares of one class may differ from the net income attributable to and the dividends payable on shares of other classes in the same Fund. As a result, the net asset values per share of the classes will differ at times.

5. The Adviser may waive or reimburse Company expenses and/or Fund expenses (with or without a waiver or reimbursement of Class Expenses) but only if the same proportionate amounts of Company expenses and/or Fund expenses are waived or reimbursed for each class. Thus, any Company expenses that are waived or reimbursed would be credited to each Fund of the Company according to the relative net assets of the Funds, and in turn credited to each class of each Fund based on the relative net assets of the classes. Similarly, any Fund expenses that are waived or reimbursed would be credited to each class of that Fund according to the relative net assets of the classes.

6. Shares of a class of one Fund will be exchangeable for shares of the same class of another Fund. Any exchanges will comply with the provisions of the rule 11a–3 under the Act.

7. Applicants also propose that Funds be permitted to charge a CDSC on certain classes of shares if the shares are redeemed within a prescribed time after their purchase (the ''CDSC Period''). The amount of the CDSC will be calculated as a specified percentage of the lesser of the net asset value at the time of purchase or at the time of redemption. No CDSC will be imposed on amounts representing increases in the value of shares due to capital appreciation, redemptions of shares acquired through reinvestment of dividends or distributions, or redemptions of shares held for longer than the CDSC Period. In determining whether the CDSC is payable, it will be assumed that shares not subject to the CDSC are redeemed first and that other shares are then redeemed in the order purchased. This will result in a charge, if any, being imposed at the lowest possible rate.

8. Applicants request the ability to waive or reduce the CDSC on certain redemptions. Any waiver of the CDSC will comply with the requirements set forth in subparagraphs (a) through (d) of rule 22d–1 under the Act. The sum of any front-end sales charge, asset-based sales charge, and CDSC will not exceed the maximum sales charge as provided in Article III, Section 26(d) of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. (''NASD'').

Applicant's Legal Analysis

1. Applicants request an exemption under section 6(c) of the Act from sections 18(f)(1), 18(g), and 18(i) of the Act to the extent that the proposed issuance and sale of shares might be deemed to result in the issuance of a ''senior security'' within the meaning of section 18(g) and thus be deemed to be prohibited by section 18(f)(1) and to violate the equal voting provisions of section 18(i). Applicants believe that the proposed allocation of expenses and voting rights in the manner described above is equitable and would not discriminate against any group of shareholders.

2. Applicants also request an exemption under section 6(c) from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder, to assess and, under certain circumstances, waive or reduce a CDSC with respect to certain redemptions of shares. Applicants believe that this would allow shareholders the option of having more investment dollars working for them from the time of their share purchases than if a sales load were imposed at the time of purchase.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund and will be identical in all respects, except as set forth below. The only differences among the classes of shares of the same Fund will relate solely to: (a) The designation of each class of shares of the Fund; (b) the exclusive right of each class of shares to vote on matters related to the Fund's Rule 12b–1 Plan and/or Service Plan, except as provided in condition 15 below; (c) the impact of disproportionate payments made under the Plans; (d) Class Expenses, which will be limited to: (i) Incremental transfer agency costs attributable to a class of shares of the Fund; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxy statements to current shareholders of a specific class; (iii) SEC registration fees incurred by a class of shares; (iv) the expense of administrative personnel and services as required to support the shareholders of a specific class; (v) trustees' fees or expenses incurred as a result of issues relating to one class of shares; (vi) accounting expenses relating solely to one class of shares; (vii) blue sky registration fees incurred by one class of shares; (viii) litigation or other legal expenses relating solely to one class of shares; and (ix) any other incremental expenses subsequently identified that

should be properly allocated to one or more classes of shares that shall be approved by the Commission pursuant to an amended order; (e) each class of shares would have different exchange privileges; and (f) each class of shares might have different rights of conversion into other classes.

2. The trustees of the Company, including a majority of the independent trustees, will have approved the multi-class distribution system prior to the implementation of the multi-class distribution system by a particular Fund. The minutes of the meetings of the trustees of the Company regarding the deliberations of the trustees with respect to the approvals necessary to implement the multi-class distribution system will reflect in detail the reasons for determining that the proposed multi-class distribution system is in the best interests of both the Funds and their respective shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the trustees of the Company, including a majority of the independent trustees. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet Class Expenses will provide to the trustees, and the trustees will review, at least quarterly, a written report of the amounts so expended and the purpose for which the expenditures were made.

4. On an ongoing basis, the trustees of the Company, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares. The trustees, including a majority of the independent trustees, will take such action as is reasonably necessary to eliminate any conflicts that may develop. The Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, the Adviser and the Distributor at their own expense will remedy the conflict up to and including establishing a new registered management investment company.

5. If any class will be subject to a Service Plan, the Service Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1(b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

6. The trustees of the Company will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only distribution or shareholder servicing expenditures properly attributable to the sale or servicing of one class of shares will be used to support any distribution or shareholder servicing fee charged to shareholders of that class of shares. Expenditures not related to the sale or servicing of a specific class of shares will not be presented to the trustees to support any fees charged to shareholders of that class of shares. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent trustees in the exercise of their fiduciary duties.

7. Dividends paid by a Fund with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that payments for services described in condition 1 above that are rendered to a particular class of shares will be borne exclusively by that class.

8. The methodology and procedures for calculating the net asset value, dividends, and distributions of the various classes and the proper allocation of expenses among the various classes have been reviewed by the Independent Examiner. The Independent Examiner has rendered a report to applicants, which has been provided to the staff of the SEC, stating that the methodology and procedures are adequate to ensure that the calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon this review, will render at least annually a report to the Company that the calculations and allocations are being made properly. The reports of the Independent Examiner will be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Independent Examiner with respect to these reports, following request by the Company, which the Company agrees to provide, will be available for inspection by the SEC staff upon the written request to a Fund for these work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Independent Examiner is a ''report on policies and procedures placed in operation,'' and the ongoing reports will be ''reports on policies and procedures placed in operation and tests of operating effectiveness,'' as defined and described in Statement of Auditing Standards (''SAS'') No. 70 of the American Institute of Certified Public Accountants (''AICPA''), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

9. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value, dividends, and distributions of the various classes of shares and the proper allocation of expenses among the classes of shares, and this representation has been concurred with by the Independent Examiner in the initial report referred to in condition 8 above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent Examiner, on an ongoing basis at least annually in the ongoing reports referred to in condition 8 above. Applicants will take immediate corrective measures if this representation is not concurred in by the Independent Examiner or appropriate substitute Independent Examiner.

10. The prospectus of each Fund, if such is the case, will contain a statement to the effect that a salesperson and any other entity entitled to receive any compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another class in the Fund.

11. The Distributor will adopt compliance standards as to when shares of a particular class may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to these standards.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees of the company with respect to the multi-class distribution system will be set forth in guidelines that will be furnished to the trustees.

13. Each Fund will disclose in its prospectus the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of

whether all classes of shares are offered through each prospectus. Each Fund will disclose the respective expenses and performance data applicable to each class of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of the Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it also will disclose the respective expenses and/or performance data applicable to all classes of shares of such Fund. The information provided by applicants for publication in any newspaper or similar listing of a Fund's net asset value or public offering price will separately present this information for each class of shares of such Fund.

14. Any class of shares with a conversion feature will convert into another class of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

15. If a Fund adopts and implements any amendment to its Rule 12b–1 Plan (or, if presented to shareholders, adopts or implements any amendment of a Service Plan) that would increase materially the amount that may be borne by the class of shares (''Target Class'') into which the class of shares with a conversion feature (''Purchase Class'') will convert under the plan, existing Purchase Class shares will stop converting into Target Class shares unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares (''New Target Class''), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into Target Class shares. If deemed advisable by the trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class (''New Purchase Class''), identical to existing Purchase Class shares in all material respects except that New Purchase Class shares will convert into New Target Class shares. A New Target Class or New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the trustees reasonably believe will not be subject to federal taxation. In accordance with condition 4 above, any additional cost associated with the creation, exchange, or conversion of New Target Class shares or New Purchase Class shares shall be borne solely by the Adviser and the Distributor. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

16. Applicants will comply with proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted, or amended.

17. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the Funds may make pursuant to Rule 12b–1 Plans or Service Plans in reliance on the exemptive order.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–1283 Filed 1–18–95; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Crown Crafts, Inc., Common Stock, $1.00 Par Value) File No. 1–7604

January 11, 1995.

Crown Crafts, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, the Security is listed on the New York Stock Exchange, Inc. (''NYSE''). The Security commenced trading on the NYSE at the opening of business on December 16, 1994 and concurrently therewith the Security was suspended from trading on the Amex.

In making the decision to withdraw the Security from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant in maintaining the dual listing of its Security on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of the Security and believes that dual listing would fragment the market for the Security.

Any interested person may, on or before February 2, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Marketing Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–1231 Filed 1–18–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–20833; 811–4135]

Drexel Burnham Lambert Unit Trusts; Notice of Application

January 12, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Drexel Burnham Lambert Unit Trusts

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATES: The application was filed on August 17, 1994 and amended on December 22, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 6, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of he writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, c/o The DBL Liquidating Trust, 450 Lexington Avenue, Suite 1400, New York, NY 10017–3911.[1]

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a registered unit investment trust under the Act and was organized as a business trust under the laws of the State of New York. On October 17, 1984, applicant filed a Notification of Registration on Form N–8A pursuant to section 8(a) of the Act and a registration statement on Form N–8B–2 under section 8(b) of the Act and under the Securities Act of 1933 (the ''Securities Act''). The registration statement became effective on November 27, 1984.

2. Between November 27, 1984 and July 30, 1987, applicant registered and commenced initial public offerings for High Income Trust Securities Series (''HITS Series'') 1 through 13 and the First Preferred Put Series (''Preferred Series''). Each series had a single class of securities (the ''unit(s)'').

3. Complete liquidation of the interests of all unit holders was made in connection with the termination of the trusts according to their terms. In connection with the termination of HITS Series 1 through 3 and HITS Series 6 through 13, liquidating trusts were created by a Liquidating Trust Indenture (the ''Liquidating Indenture'') dated June 29, 1989. United States Trust Company of New York (the ''UIT trust'') acts as trustee for the liquidating trusts. The Liquidating Indenture was created for the purpose of liquidating the securities set forth in the schedules to the Liquidating Indenture which securities were not sold by the UIT trustee in connection with the termination of the trusts as a result of a determination that transfer of such securities at such time to liquidating trusts would be in the best interests of the unit holders. The Liquidating Indenture was created pursuant to two trust indentures and agreements dated November 26, 1984 and May 29, 1985, each between Drexel, the UIT trustee, and Interactive Data Services, Inc. (the ''Evaluator'').

4. Securities remain in the liquidating trusts for HITS Series 2, 6, and 8. The number of units outstanding for those liquidating trusts are 26,250, 15,746, and 18,200, respectively. The number of security holders of the liquidating trusts are 442, 466, and 489, respectively. The securities which remain were received in a restructuring of the issuer's debt and have not been registered under the Securities Act. Upon expiration of the time period specified in rule 144, the UIT trustee anticipates that it will be able to sell the securities and distribute the proceeds less expenses to the security holders of the trusts.

5. The liquidating trusts' activities are limited to holding the assets transferred to liquidating trusts by the trusts on behalf of their beneficiaries with respect to such assets, preserving and protecting the property of the liquidating trusts, and providing for the orderly liquidation of the assets transferred to the liquidating trusts.

6. Distributions from each liquidating trust were made in accordance with the Liquidating Indenture. Upon receipt of the last proceeds of sale of the securities of each liquidating trust, the UIT trustee paid itself any amounts then owed in respect of accrued fees and expenses and distributed to each unit holder who had surrendered his or her certificate, by check, such unit holder's interest in the balance of he principal and interest accounts.[2] With respect to bonds held in the HITS Series, the UIT trustee sought bids form three dealers in the securities (in certain cases, three bids could not be obtained) and the sale was made to the highest bidder. The securities held in the Preferred Series were sold to Goldome FSB, pursuant to a put option, in accordance with its trust indenture and agreement and purchase agreement dated July 17, 1985.

7. The aggregate principal and interest distributions to unit holders of those trusts which have no remaining unit holders was approximately $55,907,487 and $1,996,427, respectively.

8. Each trust and liquidating trust paid or was charged the expenses incurred by it in connection with the liquidation. The aggregate amount of expenses borne by the trusts and liquidating trusts was approximately $405,837. Such expenses included UIT trustee and Evaluator fees, the cost of preparing tax returns and the final annual report, and postage charges.

9. As of the date of the application, applicant had no assets, liabilities, or unit holders. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor proposes to engage, in any business activities other than those necessary for the winding-up of its affairs.

10. The existence of applicant under New York Law terminated upon the termination of each trust. Each trust terminated upon the distribution of all its assets.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–1284 Filed 1–18–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–20834; 811–3412]

Fixed Income Trust; Notice of Application

January 12, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Fixed Income Trust.

RELEVANT ACT SECTION: Order requested under section 8(f).

[1] The DBL Liquidating Trust is the successor to applicant's depositor. Drexel Burnham Lambert Incorporated (''Drexel''), for the purpose set forth in its Second Amended and Restated Joint Plan of Reorganization under Chapter 11 of the United States Bankruptcy Code.

[2] According to the terms of the Liquidating Indenture, the proceeds form the sale of securities in each liquidating trust were credited to an individual principal account for each liquidating trust. The UIT trustee also collected the interest on the securities as it became payable and credited such interest to a separate interest account for each liquidating trust.

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATES: The application was filed on August 17, 1994 and amended on December 22, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 6, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, c/o The DBL Liquidating Trust, 450 Lexington Avenue, Suite 1400, New York, NY 10017–3911.[1]

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a registered unit investment trust under the Act and was organized as a business trust under the laws of the State of New York. On March 3, 1982, applicant filed a Notification of Registration on Form N–8A pursuant to section 8(a) of the Act and a registration statement on Form N–8B–2 under section 8(b) of the Act and under the Securities Act of 1933. The registration statement became effective on April 30, 1982 and applicant's initial public offering commenced on that date.

2. Applicant consisted of one series, the Zero Coupon Series 1 (the ''series''), and registered 1,084,287 units of a single class of securities (the ''unit(s)''). As of July 1, 1991, the series had 169,048 units outstanding.

3. The trust terminated in accordance with the terms of the indenture pursuant to which it was created with the maturity of the last security held in the portfolio of the trust on July 1, 1991. Upon receipt of the last proceeds of sale of the securities, the trustee, United States Trust Company of New York, paid itself any amounts then owed in respect of accrued fees and expenses and distributed to each unit holder who had surrendered his or her certificate, by check, such unit holder's interest in the balance of the principal and interest accounts.[2]

4. On July 16, 1991, applicant made its final distribution to its remaining unit holders. The per unit distribution from the principal and interest accounts was $12.94 and $0.32, respectively. The aggregate distribution from the principal and interest accounts was $2,187,481.12 and $54,095.36, respectively.

5. Applicant bore approximately $3,859.40 in expenses in connection with the liquidation. Such expenses included trustee and evaluator fees, the cost of preparing tax returns and the final annual report, and postage charges.

6. As of the date of the application, applicant had no assets, liabilities, or unit holders. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor proposes to engage, in any business activities other than those necessary for the winding-up of its affairs.

7. Applicant terminated its existence as a business trust under New York law on July 16, 1991.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–1285 Filed 1–18–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel No. IC–20835; File No. 812–9278]

Hartford Life Insurance Company, et al.

January 12, 1995.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: Hartford Life Insurance Company (''Hartford Life''), Hartford Life Insurance Company Separate Account Three (''HL Separate Account Three''), Hartford Life Insurance Company Separate Account Two (''HL Separate Account Two''), Hartford Life Insurance Company/Putnam Capital Management Trust Separate Account (''PCM Separate Account''), Hartford Life Insurance Company DC Variable Account-I (''Separate Account DC–I'') (HL Separate Account Three, HL Separate Account two, PCM Separate Account, and Separate Account DC–I referred to collectively as the ''Separate Accounts''), and Hartford Securities Distributors, Inc. (''HSD'').

RELEVANT 1940 ACT SECTIONS: Order Requested Under Section 6(c) exempting Applicants from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting payment to Hartford Life of a mortality and expense risk charge from the assets of the Separate Accounts funding individual and group variable annuity contracts issued by Hartford Life and underwritten by HSD (the ''Contracts''). The order would apply to future separate accounts of Hartford Life issuing contracts that are materially similar to the Contracts, and would permit applicants to substitute HSD for Hartford Equity Sales Company (''HESCO'') as the principal underwriter of the Contracts.

FILING DATE: The application was filed on October 12, 1994, and amended on November 14, 1994, December 22, 1994, and January 5, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, either personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on February 6, 1995, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, by certificate of service. Hearing requests should state the nature of the interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549. Applicants, c/o Rodney J. Vessels, Counsel, Hartford Life Insurance Company, 200 Hopmeadow Street, Simsbury, CT 06089.

[1] The DBL Liquidating Trust is the successor to applicant's depositor, Drexel Burnham Lambert Incorporated (''Drexel''), for the purposes set forth in its Second Amended and Restated Joint Plan of Reorganization under Chapter 11 of the United States Bankruptcy Code.

[2] According to the terms of the indenture agreement, the proceeds from the sale of securities in the trust were credited to an account known as the principal account. The trustee also collected the interest on the securities as it became payable and credited such interest to a separate account known as the interest account.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, or Wendy F. Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Hartford Life is a stock life insurance company originally incorporated under Massachusetts law and redomiciled in Connecticut.

2. HSD will register as a broker-dealer under the Securities Exchange Act of 1934 and will apply to become a member of the National Association of Securities Dealers, Inc. (''NASD'').

3. Hartford Life and each of the Separate Accounts filed applications previously, and others were issued granting the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.[1] HESCO, the designated principal underwriter for the Contracts, was an applicant in the previous applications for exemptive relief from Sections 26(a)(2)(C) and 27(c)(2). This application seeks relief to permit Applicants to substitute HSD for HESCO as the designated principal underwriter for the Contracts, which would allow HESCO to continue as broker-dealer engaged in distribution functions with respect to HESCO's own registered representatives, and would permit HSD to serve as principal underwriter and distributor with respect to entering into sales agreements with independent broker-dealers.

4. Applicants reaffirm all facts, representations and undertakings contained in the applications for exemptive relief referenced in footnote 1 above, and incorporate those applications herein by reference. To the extent that there have been any material changes in those facts, representations or undertakings, the changes have been disclosed herein. Except for the replacement of the principal underwriter, there are no material changes in the Separate Accounts or the Contracts as described in the previous applications.

5. The contingent deferred sales charge, annual maintenance fee and annual asset charge for providing mortality and expense risk guarantees are fully described in the applications for exemptive relief which were previously granted.

6. Hartford Life will make a daily charge at the rate of 1.25% annually from each Contract held in the Separate Accounts for providing mortality and expense guarantees with respect to the Contracts. Applicants estimate that between .85% and .90% of the charge is attributable to mortality risks and between .35% and .40% of the charge is attributable to expense risks.

7. The mortality and expense risk charge will not be increased. If the charge is insufficient to cover the actual costs, Hartford Life will bear the loss. Conversely, if the charge proves more than sufficient to meet actual expenses, the excess will be surplus to Hartford Life and will be available for any proper corporate purpose. Hartford Life expects a reasonable profit from the mortality and expense risk charge.

Applicants' Legal Analysis and Representations

1. Applicants request an exemption from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of a mortality and expense risk charge from the Separate Accounts.

2. Sections 26(a)(2)(C) and 27(c)(2), in pertinent part, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales loads) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

3. Applicants request that the Commission enter an Order that applies to the Separate Accounts and to future separate accounts issuing contracts that are materially similar to the Contracts exempting them from the provisions of Sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the deduction by Hartford Life, and the payment to Hartford Life, of the fee for providing the mortality and expense undertakings (deducted on a daily basis).

4. Applicants represent that:

(a) The mortality and expense risk charge is reasonable in relation to the risks assumed by Hartford Life under the Contracts;

(b) The mortality and expense risk charge is within the range of industry practice for comparable annuity contracts as determined by a survey of comparable contracts issued by a large number of other insurance companies. Hartford Life will undertake to maintain and make available to the Commission upon request a memorandum outlining the methodology and the contracts of other insurance companies underlying this representation;

(c) There is the likelihood that the proceeds from explicit sales loads will be insufficient to cover the expected costs of distributing the Contracts. Any shortfall will be covered from the assets of the general account, which may include profit from the mortality and expense risk charge. Hartford Life has concluded that there is a reasonable likelihood that the Separate Accounts' distribution financing arrangement will benefit the Separate Accounts and Contract owners. Hartford Life will maintain and make available to the Commission upon request a memorandum setting forth the basis for this representation;

(d) The Separate Accounts will invest only in open-end management companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the open-end management company, formulate and approve any plan under Rule 12b–1 to finance distribution expenses; and

(e) Future variable annuity contracts for which class relief is sought will be materially similar to the existing Contracts covered by this application.

[1] Orders granting exemptive relief were issued as follows:

(a) *Hartford Life Insurance Company*, Investment Company Act Release Nos. 20462 (notice) (Aug. 9, 1994) and 20538 (order) (Sept. 8, 1994);

(b) *Hartford Life Insurance Company*, Investment Company Act Release Nos. 20207 (notice) (Apr. 8, 1994) and 20281 (order) (May 5, 1994), which amended a prior order for exemptive relief, Investment Company Act Release Nos. 15284 (notice) (Sept. 2, 1986) and 15353 (order) (Oct. 9, 1986). Five subaccounts of HL Separate Account Two were separate accounts for Hartford Variable Annuity Company (''HVA'') before being transferred to HL Separate Account Two. Before that transfer, the five HVA separate accounts were granted an exemption from Sections 26(a)(2)(C) and 27(c)(2), *Hartford Variable Annuity Life Insurance Company*, Investment Company Act Release Nos. 12028 (notice) (Nov. 9, 1981) and 12065 (order) (December 1, 1981).

(c) *Hartford Life Insurance Company*, Investment Company Act Release Nos. 20223 (notice) (Apr. 15, 1994) and 20292 (order) (May 12, 1994), which amended a prior order for exemptive relief, Investment Company Act Release Nos. 16092 (notice) (Oct. 28, 1987) and 16149 (order) (Nov. 27, 1987).

(d) Separate Account DC–I was a separate account of HVA before it merged with Hartford Life. Before the merger with Hartford Life, Separate Account DC–I was granted an exemption from Sections 26(a)(2)(C) and 27(c)(2)1, *Hartford Variable Annuity Life Insurance Company*, Investment Company Act Release Nos. 12028 (notice) (Nov. 9, 1981) and 12065 (order) (Dec. 1, 1981).

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–1287 Filed 1–18–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20837; File No. 812–9284]

Hartford Life and Accident Insurance Company, et al.

January 12, 1995.

AGENCY: Securities and Exchange Commission (''the Commission'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: Hartford Life and Accident Insurance Company (''Hartford Life and Accident''), Hartford Life and Accident Insurance Company Separate Account One (''HLA Separate Account One'') and Hartford Life and Accident Insurance Company/Putnam Capital Management Separate Account One (''HLA/PCM Separate Account One'') (HLA Separate Account One and HLA/PCM Separate Account One referred to collectively as the ''Separate Accounts''), and Hartford Securities Distributors, Inc. (''HSD'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) exempting Applicants from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting payment to Hartford Life and Accident of a mortality and expense risk charge from the assets of the Separate Accounts funding individual and group variable annuity contracts issued by Hartford Life and Accident and underwritten by HSD (the ''Contracts''). The order would apply to future separate accounts of Hartford Life and Accident issuing contracts that are materially similar to the Contracts, and would permit applicants to substitute HSD for Hartford Equity Sales Company (''HESCO'') as the principal underwriter of the Contracts.

FILING DATE: The application was filed on October 12, 1994, an amended on November 14, 1994, December 22, 1994, and January 5, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, either personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on February 6, 1995, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, by certificate of service. Hearing requests should state the nature of the interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o Rodney J. Vessels, Counsel, Hartford Life and Accident Insurance Company, 200 Hopmeadow Street, Simsbury, CT 06089.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, or Wendy F. Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Hartford Life and Accident is a stock life insurance company licensed to do business in all states except New York and the District of Columbia.

2. HSD will register as a broker-dealer under the Securities Exchange Act of 1934 and will apply to become a member of the National Association of Securities Dealers, Inc. (''NASD'').

3. Hartford Life and Accident and each of the Separate Accounts filed applications previously, and orders were issued granting the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.[1] HESCO, the designated principal underwriter for the Contracts, was an applicant in the previous applications for exemptive relief from Sections 26(a)(2)(C) and 27(c)(2). This application seeks relief to permit Applicants to substitute HSD for HESCO as the designated principal underwriter for the Contracts, which would allow HESCO to continue as broker-dealer engaged in distribution functions with respect to HESCO's own registered representatives, and would permit HSD to serve as principal underwriter and distributor with respect to entering into sales agreements with independent broker-dealers.

4. Applicants reaffirm all facts, representations and undertakings contained in the applications for exemptive relief referenced in footnote 1 above, and incorporate those applications herein by reference. To the extent that there have been any material changes in those facts, representations or undertakings, the changes have been disclosed herein. Except for the replacement of the principal underwriter, there are no material changes in the Separate Accounts or the Contracts as described in the previous applications.

5. The contingent deferred sales charge, annual maintenance fee and annual asset charge for providing mortality and expense risk guarantees are fully described in the applications for exemptive relief which were previously granted.

6. Hartford Life and Accident will make a daily charge at the rate of 1.25% annually from each Contract held in the Separate Accounts for providing mortality and expense guarantees with respect to the Contracts, of which .90% of the charge is attributable to mortality risks and .35% of the charge is attributable to expense risks.

7. The mortality and expense risk charge will not be increased. If the charge is insufficient to cover the actual costs, Hartford Life and Accident will bear the loss. Conversely, if the charge proves more than sufficient to meet actual expenses, the excess will be surplus to Hartford Life and Accident and will be available for any proper corporate purpose. Hartford Life and Accident expects a reasonable profit from the mortality and expense risk charge.

Applicants' Legal Analysis and Representations

1. Applicants request an exemption from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of a mortality and expense risk charge from the Separate Accounts.

2. Sections 26(a)(2)(C) and 27(c)(2), in pertinent part, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from

[1] Orders granting exemptive relief were issued as follows:

(a) *Hartford Life and Accident Insurance Company*, Investment Company Act Release Nos. 18738 (notice) (May 29, 1992) and 18812 (order) (June 25, 1992); and

(b) *Hartford Life and Accident Insurance Company*, Investment Company Act Release Nos. 18737 (notice) (May 29, 1992) and 18811 (order) (June 25, 1992).

selling periodic payment plan certificates unless the proceeds of all payments (other than sales loads) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

3. Applicants request that the Commission enter an Order that applies to the Separate Accounts and to future separate accounts issuing contracts that are materially similar to the Contracts exempting them from the provisions of Sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the deduction by Hartford Life and Accident, and the payment to Hartford Life and Accident, of the fee for providing the mortality and expense undertakings (deducted on a daily basis).

4. Applicants represent that:

(a) The mortality and expense risk charge is reasonable in relation to the risks assumed by Hartford Life and Accident under the Contracts;

(b) The mortality and expense risk charge is within the range of industry practice for comparable annuity contracts as determined by a survey of comparable contracts issued by a large number of other insurance companies. Hartford Life and Accident will undertake to maintain and make available to the Commission upon request a memorandum outlining the methodology and the contracts of other insurance companies underlying this representation;

(c) There is the likelihood that the proceeds from explicit sales loads will be insufficient to cover the expected costs of distributing the Contracts. Any shortfall will be covered from the assets of the general account, which may include profit from the mortality and expense risk charge. Hartford Life and Accident has concluded that there is a reasonable likelihood that the Separate Accounts' distribution financing arrangement will benefit the Separate Accounts and Contract owners. Hartford Life and Accident will maintain and make available to the Commission upon request a memorandum setting forth the basis for this representation;

(d) The Separate Accounts will invest only in open-end management companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the open-end management company, formulate and approve any plan under Rule 12b–1 to finance distribution expenses; and

(e) Future variable annuity contracts for which class relief is sought will be materially similar to the existing Contracts covered by this application.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–1286 Filed 1–18–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20836; File No. 812–9282]

ITT Hartford Life and Annuity Insurance Company, et al.

January 12, 1995.

AGENCY: Securities and Exchange Commission (''the Commission'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: ITT Hartford Life and Annuity Insurance Company (''ITT Hartford''), ITT Hartford Life and Annuity Insurance Company Separate Account Three (''ILA Separate Account Three''), ITT Hartford Life and Annuity Insurance Company Separate Account Two (''ILA Separate Account Two''), ITT Hartford Life and Annuity Insurance Company/Putnam Capital Management Trust Separate Account Two (''ILA/PCM Separate Account Two''), ITT Hartford Life and Annuity Insurance Company Separate Account One (''ILA Separate Account One'') (ILA Separate Account Three, ILA Separate Account Two, ILA/PCM Separate Account Two and ILA Separate Account one referred to collectively as the ''Separate Accounts'') and Hartford Securities Distributors, Inc. (''HSD'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) exempting Applicants from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting payment to ITT Hartford of a mortality and expense risk charge from the assets of the Separate Accounts funding individual and group variable annuity contracts issued by ITT Hartford and underwritten by HSD (the ''Contracts''). The order would apply to future separate accounts of ITT Hartford issuing contracts that are materially similar to the Contracts, and would permit applicants to substitute HSD for Hartford Equity Sales Company (''HESCO'') as the principal underwriter of the Contracts.

FILING DATE: The application was filed on October 12, 1994, and amended on November 14, 1994, December 22, 1994, and January 5, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, either personally or by mail. Housing requests must be received by the Commission by 5:30 p.m. on February 6, 1995, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, by certificate of service. Hearing requests should state the nature of the interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Rodney J. Vessels, Counsel, ITT Hartford Life and Annuity Insurance Company, 200 Hopmeadow Street, Simsbury, CT 06089.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, or Wendy F. Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. ITT Hartford is a stock life insurance company domiciled in Wisconsin.

2. HSD will register as a broker-dealer under the Securities Exchange Act of 1934 and will apply to become a member of the National Association of Securities Dealers, Inc. (''NASD'').

3. ITT Hartford and each of the Separate Accounts filed applications previously, and orders were issued granting the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the

1940 Act.[1] HESCO, the designated principle underwriter for the Contracts, was an applicant in the previous applications for exemptive relief from Sections 26(a)(2)(C) and 27(c)(2). This application seeks relief to permit Applicants to substitute HSD for HESCO as the designated principal underwriter for the Contracts, which would allow HESCO to continue as broker-dealer engaged in distribution functions with respect to HESCO's own registered representatives, and would permit HSD to serve as principal underwriter and distributor with respect to entering into sales agreements with independent broker-dealers.

4. Applicants reaffirm all facts, representations and undertakings contained in the applications for exemptive reef referenced in footnote 1 above, and incorporate those applications herein by reference. To the extent that there have been any material changes in those facts, representations or undertakings, the changes have been disclosed herein. Except for the replacement of the principal underwriter, there are no material changes in the Separate Accounts or the Contracts as described in the previous applications.

5. The contingent deferred sales charge, annual maintenance fee and annual asset charge for providing mortality and expense risk guarantees are fully described in the applications for exemptive relief which were previously granted.

6. ITT Hartford will make a daily charge at the rate of 1.25% annually from each Contract held in the Separate Accounts for providing mortality and expense guarantees with respect to the Contracts. Applicants estimate that .90% of the charge is attributable to mortality risks and .35% of the charge is attributable to expense risks.

7. The mortality and expense risk charge will not be increased. If the charge is insufficient to cover the actual costs, ITT Hartford will bear the loss. Conversely, if the charge proves more than sufficient to meet actual expenses, the excess will be surplus to ITT Hartford and will be available for any proper corporate purpose. ITT Hartford expects a reasonable profit from the mortality and expense risk charge.

Applicants' Legal Analysis and Representations

1. Applicants request an exemption from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of a mortality and expense risk charge from the Separate Accounts.

2. Sections 26(a)(2)(C) and 27(c)(2), in pertinent part, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales loads) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

3. Applicants request that the Commission enter an Order that applies to the Separate Accounts and to future separate accounts issuing contracts that are materially similar to the Contracts exempting them from the provisions of Sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the deduction by ITT Hartford, and the payment to ITT Hartford, of the fee for providing the mortality and expense undertakings (deducted on a daily basis.)

4. Applicants represent that:

(a) the mortality and expense risk charge is reasonable in relation to the risks assumed by ITT Hartford under the Contracts;

(b) the mortality and expense risk charge is within the range of industry practice for comparable annuity contracts as determined by a survey of comparable contracts issued by a large number of other insurance companies. ITT Hartford will undertake to maintain and make available to the Commission upon request a memorandum outlining the methodology and the contracts of other insurance companies underlying this representation;

(c) there is the likelihood that the proceeds from explicit sales loads will be insufficient to cover the expected costs of distributing the contracts. Any shortfall will be covered from the assets of the general account, which may include profit from the mortality and expense risk charge. ITT Hartford has concluded that there is a reasonable likelihood that the Separate Accounts' distribution financing arrangement will benefit the Separate Accounts and Contract owners. ITT Hartford will maintain and make available to the Commission upon request a memorandum setting forth the basis for this representation;

(d) the Separate Accounts will invest only in open-end management companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the open-end and management company, formulate and approve any plan under rule 12b–1 to finance distribution expenses; and

(e) future variable annuity contracts for which class relief is sought will be materially similar to the existing Contracts covered by this application.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–1288 Filed 1–18–95; 8:45 am]

BILLING CODE 8010–01–M

[1] Orders granting exemptive relief were issued as follows:

(a) *ITT Hartford Life and Annuity Insurance Company*, Investment Company Act Release Nos. 20463 (notice) (Aug. 9, 1994) and 20539 (order) (Sept. 8, 1994);

(b) *ITT Life Insurance Company*, Investment Company Act Release Nos. 19443 (notice) (Apr. 39, 1993) and 19495 (order) (May 26, 1993);

(c) *ITT Hartford Life and Annuity Insurance Company*, Investment Company Act Release Nos. 20205 (notice) (Apr. 8, 1994), and 20279 (order) (May 5, 1994); and

(d) *ITT Hartford Life and Annuity Insurance Company*, Investment Company Act Release Nos. 20219 (notice) (Apr. 14, 1994) and 20289 (order) (May 11, 1994), which amended a prior order for exemptive relief, Investment Company Act Release Nos. 19331 (notice) (Mar. 15, 1993) and 19401 (order) (Apr. 13, 1993).

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (L. Luria & Son, Inc., Common Stock, $.01 Par Value) File No. 1–8057

January 11, 1995.

L. Luria & Son, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex,

the Security is listed on the New York Stock Exchange, Inc. (''NYSE''). The Security commenced trading on the NYSE at the opening of business on December 14, 1994 and concurrently therewith the Security was suspended from trading on the Amex.

In making the decision to withdraw the Security from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant in maintaining the dual listing of its Security on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of the Security and believes that dual listing would fragment the market for the Security.

Any interested person may, on or before February 2, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–1232 Filed 1–18–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20831; 34–35225; 812–9028]

MACC Private Equities Inc., et al.; Notice of Application

January 12, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Investment Company Act'') and the Securities Exchange Act of 1934 (the ''Exchange Act'').

APPLICANTS: MACC Private Equities Inc. (''Private Equities''), MorAmerica Capital Corporation (''MorAmerica Capital''), and InvestAmerica Investment Advisors, Inc. (''InvestAmerica'').

RELEVANT ACT SECTIONS: Order requested under sections 17(d) and 57(a)(4) of the Investment Company Act and rule 17d–1 thereunder authorizing certain joint transactions, under section 57(c) of the Act for an exemption from sections 57(a) (1), (2), and (3) of the Act, and under section 6(c) of the Act for an exemption from sections 12(d), 18(a), and 61(a) of the Act. Order also requested under section 12(h) of the Exchange Act for an exemption from section 13(a) of the Exchange Act.

SUMMARY OF APPLICATION: Applicants request an order to permit Private Equities to engage in certain transactions with its wholly-owned subsidiary, MorAmerica Capital. The order also would permit modified asset coverage requirements for Private Equities and MorAmerica Capital, and permit Private Equities and MorAmerica Capital to co-invest with certain affiliated entities. In addition, the order would permit Private Equities and MorAmerica Capital to file certain Exchange Act reports on a consolidated basis.

FILING DATE: The application was filed on May 31, 1994 and amended on August 8, 1994, and November 9, 1994. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 6, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street N.W., Washington, D.C. 20549. Applicants, Suite 310, 101 Second Street S.E., Cedar Rapids, Iowa 52401.

FOR FURTHER INFORMATION CONTACT:

Elaine M. Boggs, Staff Attorney, at (202) 942–0576, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Private Equities and its wholly-owned subsidiary, MorAmerica Capital, intend to register under the Investment Company Act as business development companies (''BDCs''). The investment objective of Private Equities is long-term capital appreciation through venture capital investments in small companies (''Portfolio Companies''). MorAmerica Capital is licensed to operate as a small business investment company (''SBIC'') under the Small Business Investment Act of 1958. Applicants chose a two-tier structure so that Private Equities could hold certain assets that a SBIC is not permitted to hold.

2. Private Equities has been formed pursuant to a plan of reorganization (the ''Plan'') for the MorAmerica Financial Corporation (''MFC'') and Morris Plan Liquidation Company (''Morris Plan''). Under the Plan, Private Equities will be the successor by merger to MFC, Morris Plan, and certain affiliates. In addition to cash and miscellaneous assets, many of which are being held for sale, Private Equities' primary asset will be all of the issued and outstanding common stock of MorAmerica Capital.

3. InvestAmerica is the investment adviser for both Private Equities and MorAmerica Capital. The principals of InvestAmerica are the founders and principals of InvestAmerica Venture Group, Inc. (''Venture Group'') (collectively with InvestAmerica, the ''InvestAmerica Companies''). The Venture Group manages the Iowa Venture Capital Fund L.P. (the ''Iowa Fund''), which is a venture capital fund that is exempt from the Investment Company Act pursuant to section 3(c)(1) of the Act. The Iowa Fund is not presently making any new investments but is making distributions to partners as investments mature or are sold. The Iowa Fund and MorAmerica Capital presently are co-invested in the securities of five Portfolio Companies.

4. The requested order would permit Private Equities and MorAmerica Capital to operate effectively as one company. Specifically, the requested relief would permit MorAmerica Capital and Private Equities to (a) engage in transactions with each other, (b) engage in transactions with Portfolio Companies that would not otherwise be prohibited if MorAmerica Capital and Private Equities were one company, and (c) allow MorAmerica Capital to have the maximum amount of borrowing permitted by the Small Business Investment Act of 1958 and the Investment Company Act. The order also would permit MorAmerica Capital and/or Private Equities to co-invest with

certain affiliated companies. In addition, the order would permit Private Equities and MorAmerica Capital to file certain reports required by the Exchange Act on a consolidated basis.

Applicants' Legal Analysis

Capital Structure

1. Section 12(d) of the Investment Company Act

a. Section 12(d)(1) of the Investment Company Act, made applicable to BDC's by section 60, limits the amount of securities a registered investment company may hold of other investment companies. Rule 60a–1 exempts a BDC's acquisition of the securities of a wholly-owned SBIC from sections 12(d)(1) (A) and (C). Thus, the transfer of assets from Private Equities to MorAmerica Capital is exempt from these provisions. Section 12(d)(1), however, also applies to the activities of MorAmerica Capital, and loans made by Private Equities to MorAmerica Capital may violate section 12(d)(1) if such loans were considered purchases by MorAmerica Capital of the securities of Private Equities. Accordingly, applicants request an exemption from section 12(d)(1) to permit MorAmerica Capital's acquisition of those securities of Private Equities representing indebtedness.

2. Sections 57(a) (1), (2), and (3)

a. Sections 57(a) (1), (2), and (3) of the Investment Company Act prohibit certain affiliated persons of a BDC from engaging in certain transactions with the BDC. Such affiliated persons include, with limited exceptions not relevant here, entities which control, are controlled by, or under common control with the BDC. Because Private Equities is the sole equity holder of MorAmerica Capital, Private Equities and MorAmerica Capital are affiliated persons of each other. Thus, applicants request an exemption from sections 57(a) (1), (2), and (3) for any transaction solely between Private Equities and MorAmerica Capital.

b. In addition, Private Equities and/or MorAmerica Capital may wish to invest in certain Portfolio Companies that may be considered affiliates of the other investing company as a result of the other's ownership of five percent or more of the Portfolio Company's stock. Applicants will not in all instances be able to rely on rule 57b–1, which exempts from section 57(a) transactions between BDC's and specific downstream affiliates. Thus, applicants request an order to exempt any transaction from section 57(a) involving Private Equities and/or MorAmerica Capital and any Portfolio Company affiliated with either or both, but only to the extent that any such transaction would not be prohibited if MorAmerica Capital and Private Equities were not separate companies.

3. Sections 18 and 61 of the Investment Company Act

a. Section 18(a) of the Investment Company Act prohibits a registered closed-end investment company from issuing any class of senior security unless the company complies with the asset coverage requirements set forth in the section. ''Asset coverage'' is defined in section 18(h) to mean the ratio which the value of the total assets of an issuer, less all liabilities not represented by senior securities, bears to the aggregate amount of senior securities of such issuer. Section 61 makes section 18, with certain modifications, applicable to a BDC. Private Equities may be required to comply with the asset coverage requirements of section 18 on a consolidated basis because it may be an indirect issuer of senior securities with respect to MorAmerica Capital's indebtedness. Accordingly, applicants request relief exempting Private Equities and MorAmerica Capital from section 18(a) and 61(a) to permit the following transactions: (a) Private Equities and MorAmerica Capital to issue and sell to banks, insurance companies, and other financial institutions their secured or unsecured promissory notes, or other evidences of indebtedness in consideration of any loan, or any extension or renewal thereof made by private arrangement; (b) MorAmerica Capital to obtain financing that the Small Business Administration permits for SBIC's; (c) MorAmerica Capital to borrow from Private Equities and Private Equities to borrow from MorAmerica Capital; and (d) Private Equities to guarantee any borrowings by MorAmerica Capital.

4. Sections 57 (a)(4) and (d) of the Investment Company Act and Rule 17d–1 Thereunder

a. Sections 57 (a)(4) and (d) of the Investment Company Act prohibit certain affiliated persons specified in section 57 (b) and (e), respectively, from participating in joint transactions with a BDC in contravention of rules and regulations prescribed by the SEC. Rule 17d–1 under the Act applies to transactions prohibited under sections 57 (a)(4) and (d) through section 57(i). Rule 17d–1 prohibits affiliated persons of a registered investment company from entering into joint transactions with the investment company unless the SEC has granted an order permitting such transaction.

b. Applicants request an order under sections 57 (a)(4) and (d) and rule 17d–1 to permit Private Equities or MorAmerica Capital to invest in Portfolio Companies in which the other is or proposes to be an investor, but only to the extent that such transaction would not be prohibited if MorAmerica Capital were deemed to be part of Private Equities and not a separate company.

Co-Investing

1. Section 57(a)(4) of the Investment Company Act and Rule 17d–1 Thereunder

a. Applicants request an order to permit Private Equities and/or MorAmerica Capital to co-invest with companies managed by InvestAmerica and the Venture Group, including the Iowa Fund (''Managed Affiliates'') now or in the future. Because InvestAmerica and the Venture Group are under common control, a Managed Affiliate also would be under common control with Private Equities and MorAmerica Capital. Thus, a Managed Affiliate would be affiliated with Private Equities and MorAmerica Capital under section 2(a)(3) of the Investment Company Act. Accordingly, applicants and the Managed Affiliates, absent an exemptive order, would be prohibited under section 57(a)(4) of the Investment Company Act from engaging in co-investment transactions.

Consolidated Reporting

1. Section 54 of the Investment Company Act and Section 12 of the Exchange Act

a. Section 54 of the Investment Company Act provides that a closed-end company may elect BDC treatment under the Investment Company Act, if the company has either a class of equity securities registered under section 12 of the Exchange Act or has filed a registration statement pursuant to section 12 of the Exchange Act for a class of its equity securities. Section 12(g) of the Exchange Act requires certain issuers to register under the Exchange Act. Private Equities will have securities registered under section 12 of the Exchange Act. In order to elect BDC treatment, MorAmerica Capital must register its securities under the Exchange Act, even though it is not required to do so by section 12(g) of the Exchange Act.

b. By filing a registration statement under section 12 of the Exchange Act, absent an exemption, MorAmerica Capital would be required by section 13(a) of the Exchange Act to file periodically with the SEC, even though

MorAmerica Capital will have only one equity holder. Accordingly, applicants request an order under the Exchange Act exempting MorAmerica Capital from the reporting requirements of section 13(a) of the Exchange Act to permit it to file consolidated reports with Private Equities.

Standards for Relief

1. Section 6(c) of the Investment Company Act permits the SEC to exempt any person or transaction from any provision of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy of the Act. Applicants state that the operation of Private Equities as a BDC with a wholly-owned SBIC subsidiary is intended to permit Private Equities to expand the scope of its operations beyond that which would be permitted to it as an SBIC. Applicants further state that the requested exemptions would permit Private Equities and MorAmerica Capital to operate effectively as one company even though they will be divided into two legal entities. Accordingly, applicants believe that the requested exemptions from sections 12(d), 18(a), and 61(a) meet the section 6(c) standards.

2. Section 57(c) permits the SEC to grant an order permitting a transaction otherwise prohibited by sections 57(a)(1), (2), and (3) if it finds that the participation of such investment company is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants believe that the requested exemptions meet these standards.

3. Section 57(i) of the Investment Company Act provides that the rules and regulations of the SEC under sections 17 (a) and (d) applicable to registered closed-end investment companies shall apply to transactions subject to sections 57(a) and (d) in the absence of rules under sections 57(a) and (d). No rules with respect to joint transactions have been adopted under sections 57(a) and (d). Rule 17d–1 under the Act prohibits affiliated persons of a registered investment company from entering into joint transactions with the investment company unless the SEC has granted an order permitting the transaction. Applicants believe that the requested authorization under sections 57(a)(4) and (d) and rule 17d–1 is appropriate.

4. Section 12(h) of the Exchange Act provides that the SEC may exempt an issuer from section 13 of the Exchange Act if the SEC finds that by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the issuer, or otherwise, that such action is not inconsistent with the public interest or the protection of investors. Private Equities is the sole equity holder of MorAmerica Capital and applicants represent that there will be no trading in MorAmerica securities. Further, applicants state that the nature and extent of MorAmerica Capital's activities are such that its activities will be fully reported through consolidated reporting in accordance with normal accounting rules. Accordingly, applicants believe that the requested exemption meets the Exchange Act's section 12(h) standards.

Applicants' Conditions

Applicants agree that the following conditions will govern transactions under the requested order:

Capital Structure Conditions

1. Private Equities will at all times own and hold beneficially and of record all of the outstanding capital stock of MorAmerica Capital.

2. MorAmerica Capital will have the same fundamental investment policies as Private Equities, as set forth in Private Equities' registration statement; MorAmerica Capital will not engage in any other activities described in section 13(a) of the Investment Company Act, except in each case as authorized by the vote of a majority of the outstanding voting securities of Private Equities.

3. No person shall serve or act as investment adviser to MorAmerica Capital unless the directors and shareholders of Private Equities shall have taken the action with respect thereto also required to be taken by the directors and shareholders of MorAmerica Capital.

4. No person shall serve as a director of MorAmerica Capital unless elected as a director of Private Equities at its most recent annual meeting, as contemplated by section 16(a) of the Investment Company Act. Vacancies on Private Equities' board of directors will be filled in the manner provided for in section 16(a). Notwithstanding the foregoing, the board of directors of MorAmerica Capital will be elected by Private Equities as the sole shareholder of MorAmerica Capital, and such board will be composed of the same persons that serve as directors of Private Equities.

5. Private Equities will not itself issue or sell any senior security and Private Equities will not cause or permit MorAmerica Capital to issue or sell any senior security of which Private Equities or MorAmerica Capital is the issuer except to the extent permitted by section 18 (as modified for BDCs by section 61) of the Investment Company Act; provided that immediately after the issuance or sale of any such notes or evidences of indebtedness by either Private Equities or MorAmerica Capital, Private Equities and MorAmerica Capital on a consolidated basis, and Private Equities individually, shall have the required asset coverage, except that, in determining whether Private Equities and MorAmerica Capital on a consolidated basis have the asset coverage required by section 61(a), any borrowings by MorAmerica Capital from Private Equities, for purposes of the definition of ''asset coverage'' in section 18(h), shall be treated as indebtedness not represented by senior securities.

6. Private Equities will acquire securities of MorAmerica Capital representing indebtedness only if, in each case, the prior approval of the SBA has been obtained. In addition, Private Equities and MorAmerica Capital will purchase and sell portfolio securities between themselves only if, in each case, the prior approval of the SBA has been obtained.

Co-Investing Conditions

1. a. To the extent that Private Equities and MorAmerica Capital are considering new investments, InvestAmerica will review investment opportunities on their behalf, including investments being considered on behalf of the Managed Affiliates. InvestAmerica will determine whether a particular investment is eligible for investment by Private Equities and/or MorAmerica, as the case may be.

b. If InvestAmerica deems an investment eligible for investment by Private Equities and/or MorAmerica Capital (the ''Investing Company''), InvestAmerica will determine what it considers to be an appropriate amount that the Investing Company should invest in the particular investment. Where the aggregate amount recommended for the Investing Company and that sought by the Managed Affiliates is greater than the amount available for investment, the amount available for purchase by the Investing Company shall be determined on a *pro rata* basis determined by dividing the net assets of the Investing Company by the sum of the net assets of the Investing Company and each of the Managed Affiliates seeking to make the investment.

c. Following the making of the determinations referred to in (a) and (b), InvestAmerica will distribute written information concerning all eligible investments to the Investing Company's non-interested directors. Such information will include the name of each Managed Affiliate that proposes to make the investment and the amount of each proposed investment.

d. Information regarding InvestAmerica's preliminary determinations will be reviewed by the Investing Company's non-interested directors. The Investing Company will only make a joint investment with a Managed Affiliate if a required majority (as defined in section 57(o) of the investment Company Act) (''Required Majority'') of the Investing Company's non-interested directors conclude, prior to the acquisition of the investment, that:

i. the terms of the transaction, including the consideration to be paid, are reasonable and fair to the shareholders of Private Equities and do not involve overreaching of the Investing Company or such shareholders on the part of any person concerned;

ii. the transaction is consistent with the interests of the shareholders of Private Equities and is consistent with the Investing Company's investment objectives and policies as recited in filings made by the Investing Company under the Securities Act of 1933, as amended, its registration statement and reports filed under the Exchange Act, as amended, and its reports to shareholders;

iii. the investments by the Managed Affiliates would not disadvantage the Investing Company and that participation by the Investing Company would not be on a basis different from or less advantageous than that of Managed Affiliates; and

iv. the proposed investment by the Investing Company will not benefit InvestAmerica or any affiliated entity, other than the Managed Affiliates making the proposed joint investment, except to the extent permitted pursuant to sections 17(e) and 57(k) of the Investment Company Act.

e. An Investing Company may decline to participate in the co-investment, or may purchase less than its full allocation.

2. The Investing Company will not make an investment for its portfolio if a Managed Affiliate or InvestAmerica or a person controlling, controlled by, or under common control with InvestAmerica is an existing investor in such company; with the exception of the five present co-investments of MorAmerica Capital and the Iowa Fund.

3. All purchases of securities by the Investing Company effected with a Managed Affiliate as a joint participant shall consist of the same class of securities, including the same registration rights (if any), and other rights related thereto, at the same price and on the same terms and conditions, and the settlement dates will be the same.

4. If one or more Managed Affiliates elect to sell, exchange, or otherwise dispose of a security that is also held by the Investing Company, InvestAmerica will notify the Investing Company of the proposed disposition at the earliest practical time and the Investing Company will be given the opportunity to participate in such sale on a proportionate basis, at the same price and on the same terms and conditions as those applicable to Managed Affiliates. InvestAmerica will formulate a recommendation as to participation by the Investing Company in such a disposition, and provide a written recommendation to the Investing Company's non-interested directors. The Investing Company will participate in such disposition to the extent that a Required Majority of its non-interested directors determine that it is in the Investing Company's best interest. The Investing Company and each Managed Affiliate will bear its own expenses associated with the disposition of a portfolio security.

5. If a Managed Affiliate desires to make a ''follow-on'' investment (*i.e.*, an additional investment in the same entity) in a particular portfolio company whose securities are held by the Investing Company or to exercise warrants or other rights to purchase securities of such an issuer, InvestAmerica will notify the Investing Company of the proposed transaction at the earliest practical time. InvestAmerica will formulate a recommendation as to the proposed participation by the Investing Company in a follow-on investment, and provide the recommendation to the Investing Company's non-interested directors along with notice of the total amount of the follow-on investment. The Investing Company's non-interested directors will make their own determination with respect to follow-on investments. To the extent that the amount of a follow-on investment available to a Managed Affiliate and the Investing Company is not based on the amount of their initial investment, the relative amount of investment by each Managed Affiliate participating in a follow-on investment and the Investing Company will be based on a ratio derived by comparing the remaining funds available for investment by the Investing Company and each such Managed Affiliate with the total amount of the follow-on investment. The Investing Company will participate in such investment to the extent that a Required Majority of its non-interested directors determine that it is in the Investing Company's best interest. The acquisition of follow-on investments as permitted by this condition will be subject to the other conditions set forth in the application.

6. The Investing Company's non-interested directors will review quarterly all information concerning co-investments made by the Investing Company, including co-investments in which one or more Managed Affiliates declined to participate, so that they may determine whether all investments made during the preceding quarter, including those investments they declined, complied with the conditions set forth above.

7. The Investing Company will maintain the records required by section 57(f)(3) of the Investment Company Act as if each of the transactions permitted under these conditions were approved by the Investing Company's non-interested directors under section 57(f).

8. No non-interested director of the Investing Companies will be a non-interested director of a Managed Affiliate with which the Investing Company co-invests.

Consolidated Reporting Conditions

1. Private Equities will (a) file with the SEC on behalf of itself and MorAmerica Capital, all information and reports required to be filed with the SEC under the Exchange Act and other federal securities laws, including financial statements prepared solely on a consolidated basis as to Private Equities and MorAmerica Capital, such information and reports to be in satisfaction of the separate filing obligations of MorAmerica Capital; and (b) provide to its shareholders such information and reports required to be disseminated to Private Equities' shareholders, including financial statements prepared solely on a consolidated basis as to Private Equities and MorAmerica Capital, such reports to be in satisfaction of the separate filing obligations of Private Equities. Notwithstanding anything in this condition, Private Equities will not be relieved of any of its reporting obligations including, but not limited to, any consolidating statement setting forth the individual statement of MorAmerica Capital required by rule 6–03(c) of Regulation S–X.

2. Private Equities and MorAmerica Capital may file on a consolidated basis pursuant to the above condition only so long as the amount of Private Equities' total consolidated assets invested in assets other than (a) securities issued by MorAmerica Capital or (b) securities similar to those in which MorAmerica Capital invests, does not exceed 10%.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–1289 Filed 1–18–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20830; No. 812–9306]

Offitbank Variable Insurance Fund, Inc., et al.

January 11, 1995.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: Offitbank Variable Insurance Fund, Inc. (''Fund'') and Offitbank (collectively, ''Applicants'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 9(a), 13(a), and 15(a) and 15 (b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order exempting themselves and certain affiliated and unaffiliated life insurance companies (''Participating Insurance Companies'') and their separate accounts (''Separate Accounts'') to the extent necessary to permit shares of any current or future investment series of the Fund to be sold to and held by Separate Accounts funding variable annuity and variable life insurance contracts issued by Participating Insurance Companies.

FILING DATE: The application was filed on October 24, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 6, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants: Stephen Brent Wells, Offitbank Variable Insurance Fund, Inc., 237 Park Avenue, Suite 910, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Pamela K. Ellis, Attorney, at (202) 942–0554, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund is a Maryland corporation registered under the 1940 Act as an open-end management investment company.

2. The Fund's common stock is divided into separate series, each series representing an interest in a separate investment portfolio (''Existing Portfolios''). The Board of Directors of the Fund is authorized to classify or reclassify any unissued shares of the portfolios (''New Portfolios'') (together with Existing Portfolios, ''Portfolios'').

3. The Portfolios will serve as investment vehicles for various types of variable annuity and variable life insurance contracts (''Variable Contracts''). Portfolio shares will be offered to Separate Accounts of certain affiliated and unaffiliated Participating Insurance Companies which enter into participation agreements (''Participation Agreements'') with the Portfolios and the Fund.[1]

4. Offitbank serves as investment adviser to each of the Existing Portfolios. Offit Funds Distributor, Inc. (''Offit'') serves of the distributor for the Existing Portfolios. Offitbank is a New York state chartered trust company and is exempt from registration as an investment advisor or as a broker dealer.[2] Offit is a wholly-owned subsidiary of Furman Selz Incorporated, an unaffiliated, privately-held corporation.[3]

[1] Applicants represent that the Separate Accounts will be unit investment trusts, and that, during the Notice Period, the application will be amended to reflect this representation.

[2] Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

[3] Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order under Section (6)(c) of the 1940 Act granting exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15). Exemptive relief is sought by Applicants and affiliated and unaffiliated Participating Insurance Companies and their Separate Accounts to the extent necessary to permit mixed and shared funding, as defined below.

2. Rule 6e–2(b)(15) provides partial exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act to separate accounts registered under the 1940 Act as unit investment trusts to the extent necessary to offer and sell scheduled premium variable life insurance contracts. The relief provided by the rule also extends to a separate account's investment adviser, principal underwriter, and sponsor or depositor.

3. The exemptions granted by Rule 6e–2(b)(15) are available only to a management investment company underlying a separate account (''underlying fund'') that offers its shares exclusively to variable life insurance separate accounts of a life insurer, or of any other affiliated life insurance company, issuing scheduled premium variable life insurance contracts. The relief granted by Rule 6e–2(b)(15) is not available to the separate account issuing scheduled premium variable life insurance contracts if the underlying fund also offers its shares to a separate account issuing variable annuity or flexible premium variable life insurance contracts. The use of a common underlying fund as an investment vehicle for both variable annuity contracts and scheduled or flexible premium variable life insurance contracts is referred to herein as ''mixed funding.''

4. Additionally, the relief granted by Rule 6e–2(b)(15) is not available to separate accounts issuing scheduled premium variable life insurance contracts if the underlying fund also offers its shares to unaffiliated life insurance company separate accounts funding variable contracts. The use of a common fund as an underlying investment vehicle for separate accounts of unaffiliated insurance companies is referred to herein as ''shared funding.''

5. Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act to separate accounts registered as unit investment trusts that offer flexible premium variable life insurance contracts. The exemptive relief extends to a separate account's investment

adviser, principal underwriter, and sponsor or depositor. These exemptions are available only where the underlying fund of the separate accounts offers its shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company * * *.'' Therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance separate accounts, subject to certain conditions. However, Rule 6e–3(T) does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available to a flexible premium variable life insurance separate account that owns shares of a management company that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts) of affiliated life insurance companies.

6. For these reasons, Applicants seek an order under Section 6(c) of the 1940 Act. Section 6(c) authorizes the Commission to grant exemptions from the provisions of the 1940 Act, and rules thereunder, if and to the extent that an exemption is necessary or appropriate in the pubic interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

7. Section 9(a) of the 1940 Act makes it unlawful for any company to serve as an investment adviser to, or principal underwriter for, any registered open-ended investment company if an affiliated person of that company is subject to any disqualification specified in Sections 9(a)(1) or 9(a)(2). Subparagraphs (b)(15)(i) and (ii) of Rules 6e–2 and 6e–3(T) provide exemptions from Section 9(a) under certain circumstances, subject to limitations on mixed and shared funding. The relief provided by subparagraphs (b)(15)(i) of Rules 6e–2 and 6e–3(T) permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by subparagraph (b)(15)(ii) of Rules 6e–2 and 6e–3(T) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) are participating in the management or administration of the fund.

8. Applicants state that the partial relief granted under subparagraphs (b)(15) of Rules 6e–2 and 6e–3(T) from the requirements of Section 9(a), in effect, limits the monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants submit that Rules 6e–2 and 6e–3(T) recognize that it is not necessary for the protection of investors or for the purposes of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to an investment company in that organization. Applicants further submit that there is no regulatory reason to apply the provisions of Section 9(a) to the many individuals in various unaffiliated Participating Insurance companies that may utilize the Portfolios as the funding medium for variable contracts because of mixed and shared funding.

9. Subparagraph (b)(15)(iii) of Rules 6e–2 and 6e–3T provide partial exemptions from Sections 13(a), 15(a) and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require ''pass-through'' voting with respect to management investment company shares held by a separate account, to permit the insurance company to disregard the voting instructions of its contractowners in certain limited circumstances.[4]

10. Voting instructions may be disregarded under subparagraph (b)(15)(iii)(A) of Rules 6e–2 and 6e–3(T) if they would cause the underlying fund to make, or refrain from making, certain investments which would result in changes to the subclassification or investment objectives of the underlying fund, or to approve or disapprove any contract between a fund and its investment advisers, when required to do so by an insurance regulatory authority, subject to the provisions of paragraphs (b)(15)(i) and (b)(7)(ii)(A) of each Rule.

11. Under subparagraph (b)(15)(iii)(B) of Rule 6e–2 and subparagraph (b)(15)(iii)(A)(*2*) of Rule 6e–3(T), an insurance company may disregard contractowners' voting instructions if the contractowners initiate any change in the underlying fund's investment objectives, principal underwriter or investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraph (b)(15)(ii) and (b)(7)(ii)(B) and (C) of each Rule.

12. Applicants submit that shared funding by affiliated life insurance does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. In this regard, Applicants state that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. Accordingly, Applicants submit that the fact that different insurer may be domiciled in different states does not create a significantly different or enlarged problem.

13. Applicants state further that, under paragraph (b)(15) of Rules 6e–2 and 6e–3(T), the right of an insurance company to disregard contractowners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts, and that affiliation does not eliminate the potential, if any, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser. Applicants state that the potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations.

14. Applicants submit that mixed and shared funding should benefit variable contractowners by: (a) eliminating a significant portion of the costs of establishing and administering separate funds; (b) permitting the expansion of the variety of funding options available under existing variable contracts; and (c) encouraging more insurance companies to offer variable contracts, resulting in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges.

15. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding. Applicants state that each of the Portfolios will be managed to attempt to achieve its investment objective and not to favor or disfavor any particular Participating Insurance Company, separate account, or type of insurance product. Separate accounts organized as unit investment trusts have historically been employed to accumulate shares of

[4] Applicants request no relief for variable annuity separate accounts from the disqualification or pass-through voting provisions.

mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Applicants also believe that mixed and shared funding will have no adverse federal income tax consequences.

Applicants' Conditions

The Applicants have consented to the following conditions:

1. A majority of the Board of the Fund shall consist of persons who are not ''interested persons'' of the Fund as defined by Section 2(a)(19) of the 1940 Act and Rules thereunder, and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of death, disqualification, or bona fide resignation of any Director(s), then the operation of this conditions shall be suspended: (i) for a period of 45 days, if the vacancy or vacancies may be filled by the Board; (ii) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribe by order upon application.

2. The Board of the Fund will monitor the Portfolios for the existence of any material irreconcilable conflict between the interests of the contractowners of all separate accounts investing in any of the Portfolios. A material irreconcilable conflict may arise for a variety of reasons, including:

(a) State insurance regulatory authority action;

(b) A change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities;

(c) An administrative or judicial decision in any relevant proceeding;

(d) The manner in which investments of a Portfolio are being managed;

(e) A difference among voting instructions given by a variable annuity and variable life insurance contractowners; or

(f) A decision by a Participating Insurance Company to disregard contractowners' voting instructions.

3. Participating Insurance Companies and Offitbank will report any potential or existing conflicts, of which they become aware, to the Board of the Fund. Participating Insurance Companies and Offitbank will be obligated to assist the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for it to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contractowner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participating Insurance Companies investing in a Portfolio under their Participation Agreements, and those Participation Agreements shall provide that such responsibilities will be carried out with a view only to the interests of the contractowners.

4. If a majority of the Board of the Fund, or a majority of the Independent Directors, determine that a material irreconcilable conflict exists, the relevant Participating Insurance Companies shall, at their expense and to the extent reasonably practicable (as determined by a majority of Independent Directors), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the Portfolios and reinvesting those assets in a different investment medium (including another Applicant, if any) or submitting the question whether such segregation should be implemented to a vote of all affected contractowners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contractowners, life insurance contractowners, or variable contractowners of one or more Participating Insurance Companies that votes in favor of such segregation), or offering to the affected contractowners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contractowner voting instructions, and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of Offitbank (on behalf of one or more of the Portfolios), to withdraw its Separate Account's investment therein, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a determination by the Board of the Fund that an irreconcilable material conflict exists and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies under their Participation Agreements, and these responsibilities will be carried out with a view only to the interests of the contractowners.

For purposes of this condition, a majority of Independent Directors shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Fund or Offitbank be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this condition to establish a new funding medium for any variable contract if an offer to do so has been declined by a vote of a majority of contractowners materially affected by the irreconcilable material conflict.

5. The determination by the Board of the Fund of the existence of an irreconcilable material conflict and its implications shall be made known promptly in writing to all Participating Insurance Companies in the Portfolios.

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contractowners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contractowners. Accordingly, Participating Insurance Companies will vote shares of a Portfolio held in their Separate Accounts in a manner consistent with timely voting instructions received from contractowners. Each Participating Insurance Company also will vote shares of a Portfolio held in its Separate Accounts for which no timely voting instructions from contractowners are received, as well as shares it owns, in the same proportion as those shares for which voting instructions are received. Participating Insurance Companies shall be responsible for assuring that each of their Separate Accounts participating in a Portfolio calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in a Portfolio shall be a contractual obligation of all Participating Insurance Companies under their Participation Agreements.

7. Each Portfolio will notify all Participating Insurance Companies that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Portfolio shall disclose in its Prospectus that:

(a) Its shares may be offered to insurance company separate accounts that fund annuity and life insurance contracts of Participating Insurance Companies that may or may not be affiliated with one another;

(b) Because of differences of tax treatment or other considerations, the

interests of various contractowners might at some time be in conflict; and

(c) The Board of the Fund will monitor for any material conflicts and determine what action, if any, should be taken.

8. All reports received by the Board regarding potential or existing conflicts, and all action of the Board with respect to determining the existence of a conflict, notifying Participating Insurance Companies of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

9. If and to the extent Rule 6e–2 or Rule 6e–3(T) are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested, then the Portfolios and/or the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

10. The Portfolios will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Portfolios), and, in particular, each Portfolio either will provide for annual meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or, as each Portfolio currently intends, comply with Section 16(c) of the 1940 Act (although the Portfolios are not trusts described in this section) as well as with Section 16(a) and, if and when applicable, Section 16(b).[5] Further, each Portfolio will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may adopt with respect thereto.

11. The Participating Insurance Companies and/or Offitbank shall, at least annually, submit to the Board of the Fund such reports, materials or data as the Board may reasonably request so that the Board may fully carry out the obligations imposed upon it by these stated conditions, and said reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participating Insurance Companies to provide these reports, materials, and data upon reasonable request of the Board shall be a contractual obligation of all Participating Insurance Companies under their Participation Agreements.

[5] Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

Conclusion

For the reasons stated above, Applicants assert that the requested exemptions, in accordance with the standards of Section 6(c), are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–1233 Filed 1–18–95; 8:45 am]

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DEPARTMENT OF STATE

Bureau of Oceans and International Environmental and Scientific Affairs

[Public Notice 2150]

Conservation Measures for Antarctic Fishing Under the Auspices of the Commission for the Conservation of Antarctic Marine Living Resources

AGENCY: Bureau of Oceans and International Environmental and Scientific Affairs, State Department.

ACTION: Notice.

SUMMARY: At its Thirteenth Meeting in Hobart, Tasmania, October 26 to November 4, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), of which the United States is a member, adopted the conservation measures and the resolution listed below, pending countries' approval, pertaining to fishing in the CCAMLR Convention Area in Antarctic waters. These were agreed upon in accordance with Article IX, paragraph 6(A) of the Convention for the Conservation of Antarctic Marine Living Resources. The measures restrict overall catches of certain species of fish, prohibit the taking of certain species of fish, list the fishing seasons, define the reporting requirements, and specify measures that must be taken to minimize the incidental taking of non-target species.

DATES: Persons wishing to comment on the measures or desiring more information should submit written comments on or before February 8, 1995.

FOR FURTHER INFORMATION CONTACT: Erica Keen, Division of Polar Affairs, Office of Oceans Affairs (OES/OA/PA), Room 5801, Department of State, Washington, D.C. 20520, (202)647–3262.

SUPPLEMENTARY INFORMATION:

Conservation Measures Adopted at the Thirteenth Annual Meeting of CCAMLR

At its Thirteenth Annual Meeting in Hobart, Tasmania, October 26 to November 4, 1994, the Commission on the Conservation of Antarctic Marine Living Resources (CCAMLR) adopted the following conservation measures and resolution. The conservation measures addressing catch limitations were adopted in accordance with Conservation measure 7/V and therefore enter into force immediately.

Conservation Measures Adopted in 1994

Conservation Measure 18/XIII

Procedure for According Protection to CEMP Sites

The Commission,

Bearing in mind that the Scientific Committee has established a system of sites contributing data to the CCAMLR Ecosystem Monitoring Program (CEMP), and that additions may be made to this system in the future;

Recalling that it is not the purpose of the protection accorded to CEMP sites to restrict fishing activity in adjacent waters;

Recognizing that studies being undertaken at CEMP sites may be vulnerable to accidental or willful interference;

Concerned, therefore, to provide protection for CEMP sites, scientific investigations and the Antarctic marine living resources therein, in cases where a Member or Members of the Commission conducting or planning to conduct CEMP studies believes such protection to be desirable;

hereby adopts the following Conservation Measure in accordance with Article IX of the Convention:

1. In cases where a Member or Members of the Commission conducting, or planning to conduct, CEMP studies at a CEMP site believe it desirable that protection should be accorded to the site, it, or they, shall prepare a draft management plan in accordance with Annex A to this Conservation Measure.

2. Each such draft management plan shall be sent to the Executive Secretary for transmission to all Members of the Commission for their consideration at least three months before its consideration by WG–EMM.

3. The draft management plan shall be considered in turn by WG–EMM, the Scientific Committee and the Commission. In consultation with the Member or Members of the Commission which drew up the draft management plan, it may be amended by any of these bodies. If a draft management plan is amended by either WG–EMM or the Scientific Committee, it shall be passed on in its amended form either to the Scientific Committee or the Commission as the case may be.

4. If, following completion of the procedures outlined in paragraphs 1 to 3 above, the Commission considers it appropriate to accord the desired protection to the CEMP site, the Commission shall adopt a Resolution calling on Members to comply, on a voluntary basis, with the provisions of the draft management plan, pending the conclusion of action in accordance with paragraphs 5 to 8 below.

5. The Executive Secretary shall communicate such a Resolution to SCAR, the Antarctic Treaty Consultative Parties and, if appropriate, the Contracting Parties to other components of the Antarctic Treaty System which are in force.

6. Unless, before the opening date of the next regular meeting of the Commission, the Executive Secretary has received:

(i) An indication from an Antarctic Treaty Consultative Party that it desires the resolution to be considered at a Consultative Meeting; or

(ii) An objection from any other quarter referred to in paragraph 5 above; the Commission may, by means of a conservation measure, confirm its adoption of the management plan for the CEMP site and shall include the management plan in Annex B to Conservation Measure 18/XIII.

7. In the event that an Antarctic Treaty Consultative Party has indicated its desire for the Resolution to be considered at a Consultative Meeting, the Commission shall await the outcome of such consideration, and may then proceed accordingly.

8. If objection is received in accordance with paragraphs 6(ii) or 7 above, the Commission may institute such consultations as it may deem appropriate to achieve the necessary protection and to avoid interference with the achievement of the principles and purposes of, and measures approved under, the Antarctic Treaty and other components of the Antarctic Treaty System which are in force.

9. The management plan of any site may be amended by decision of the Commission. In such cases full account shall be taken of the advice of the Scientific Committee. Any amendment which increases the area of the site or adds to categories or types of activities that would jeopardize the objectives of the site shall be subject to the procedures set out in paragraphs 5 to 8 above.

10. Entry into a CEMP site included in Annex B shall be prohibited except for the purposes authorized in the relevant management plan for the site and in accordance with a permit issued under paragraph 11.

11. Each Contracting Party shall, as appropriate, issue permits authorizing its nationals to carry out activities consistent with the provisions of the management plans for CEMP sites and shall take such other measures, within its competence, as may be necessary to ensure that its nationals comply with the management plans for such sites.

12. Copies of such permits shall be sent to the Executive Secretary as soon as practical after they are issued. Each year the Executive Secretary shall provide the Commission and the Scientific Committee with a brief description of the permits that have been issued by the Parties. In cases where permits are issued for purposes not directly related to the conduct of CEMP studies at the site in question, the Executive Secretary shall forward a copy of the permit to the Member or Members of the Commission conducting CEMP studies at that site.

13. Each management plan shall be reviewed every five years by WG–EMM and the Scientific Committee to determine whether it requires revision and whether continued protection is necessary. The Commission may then act accordingly.

Conservation Measure 29/XIII [1] [2]

Minimization of the Incidental Mortality of Seabirds in the Course of Longline Fishing or Longline Fishing Research in the Convention Area

The Commission,

Noting the need to reduce the incidental mortality of seabirds during longline fishing by minimizing their attraction to the fishing vessels and by preventing them from attempting to seize baited hooks, particularly during the period when the lines are set,

Agrees to the following measures to reduce the possibility of incidental mortality of seabirds during longline fishing.

1. Fishing operations shall be conducted in such a way that the baited hooks sink as soon as possible after they are put in the water. Only thawed bait shall be used.

2. Longlines shall be set at night only (i.e., between the times of nautical twilight). During longline fishing at night, only the minimum ship's lights necessary for safety shall be used.

3. Trash and offal should not be dumped while longlines are being set or hauled; if discharge of offal is unavoidable, this discharge shall take place as far as possible and/or on the opposite side of the vessel from the area of the vessel where longlines are set or hauled.

4. Every effort should be made to ensure that birds captured alive during longlining are released alive and that wherever possible hooks are removed without jeopardizing the life of the bird concerned.

5. A streamer line designed to discourage birds from settling on baits during deployment of longlines shall be towed. Specification of the streamer line and its method of deployment is given in the Appendix to this Measure. Details of the construction relating to the number and placement of swivels may be varied so long as the effective sea surface covered by the streamers is no less than that covered by the currently specified design. Details of the device dragged in the water in order to create tension in the line may also be varied.

6. Other variations in the design of streamer lines can be tested on vessels carrying two observers, at least one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, providing that all other elements of this Conservation Measure are complied with.[3]

Appendix to Conservation Measure 29/XIII

1. The streamer line is to be suspended at the stern from a point approximately 4.5 m above the water and such that the line is directly above the point where the baits hit the water.

2. The streamer line is to be approximately 3 mm diameter, have a minimum length of 150 m and have a device at the end to create tension so that the main line streams directly behind the ship even in cross winds.

3. At 5 m intervals commencing from the point of attachment to the ship five branch streamers each comprising two strands of approximately 3 mm diameter cord should be

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

[3] The streamer lines under test should be constructed and operated taking full account of the principles set out in WG–IMALF–94/19 and available from the CCAMLR Secretariat.

attached. The length of the streamer should range between approximately 3.5 m nearest the ship to approximately 1.25 m for the fifth streamer. When the streamer line is deployed the branch streamers should reach the sea surface and periodically dip into it as the ship heaves. Swivels should be placed in the streamer line at the towing point, before and after the point of attachment of each branch streamer and immediately before any weight placed on the end of the streamer line. Each branch streamer should also have a swivel at its attachment to the streamer line.

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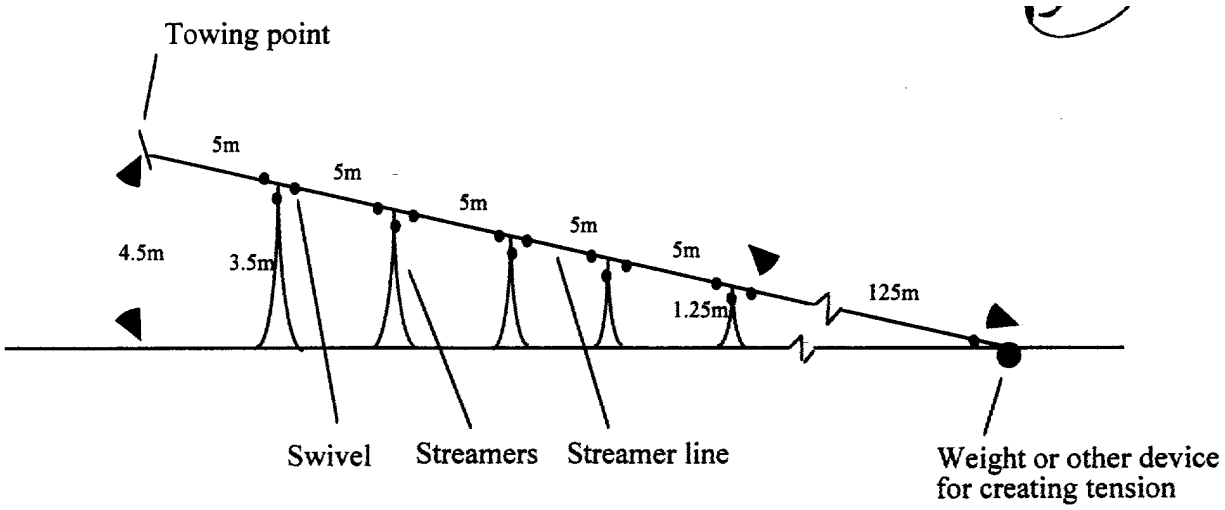

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F4703

Prohibition of Directed Fishery on *Notothenia gibberifrons, Chaenocephalus aceratus, Pseudochaenichthys georgianus, Notothenia squamifrons* and *Patagonotothen guntheri*, in Statistical Subarea 48.3 for the 1994/95 and 1995/96 Seasons

This Conservation Measure is adopted in accordance with Conservation Measure 7/V:

Directed fishing on *Notothenia Gibberifrons, Chaenocephalus aceratus, Pseudochaenichthys georgianus, Notothenia squamifrons* and *Patagonotothen guntheri* in Statistical Subarea 48.3 is prohibited in the 1994/95 and 1995/96 seasons, defined as the period from 5 November 1994 to the end of the Commission meeting in 1996.

Conservation Measure 77/XIII

Catch Limit on *Dissostichus eleginoides* in Statistical Subarea 48.4 for the 1994/95 Season

1. The total catch of *Dissostichus eleginoides* in Statistical Subarea 48.4 caught in the 1994/95 season shall be limited to 28 tonnes.

2. For the purposes of the fishery for *Dissostichus eleginoides* in Statistical Subarea 48.4, the 1994/95 fishing season is defined as the period from 15 December 1994 to the end of the Commission meeting in 1995, or until the TAC is reached, whichever is sooner.

3. For the purpose of implementing this Conservation Measure:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XII shall apply in the 1994/95 season, commencing on 15 December 1994.

(ii) the Effort and Biological Data Reporting System set out in Conservation Measure 81/XIII shall apply in the 1994/95 season, commencing on 15 December 1994.

F4703

Precautionary Catch Limits on *Champsocephalus gunnari* and *Dissostichus eleginoides* in Division 58.5.2

1. In accordance with the management advice of the 1994 meeting of the Scientific Committee:

(i) A precautionary TAC of 311 tonnes in any one season shall be set for *Champsocephalus gunnari* in Division 58.5.2; and

(ii) A precautionary TAC of 297 tonnes in any one season shall be set for *Dissostichus eleginoides* in Division 58.5.2. This TAC may only be taken by trawling.

2. The five-day catch and effort reporting system set out in Conservation Measure 51/XII and the monthly effort and biological data reporting system set out in Conservation Measure 52/XI shall apply.

3. The fishing season shall commence in each year at the close of the annual meeting of the Commission and shall continue until the respective precautionary catch limits are reached, or until 30 June, whichever comes first.

4. For the purposes of implementing this Conservation Measure, the catches shall be reported to the Commission on a monthly basis.

5. Those limits shall be kept under review by the Commission, taking into account the advice of the Scientific Committee.

Conservation Measure 79/XIII

Limits on the Exploratory Crab Fishery in Statistical Subarea 48.3 in the 1994/95 Season

The following Conservation Measure is adopted in accordance with Conservation Measure 7/V:

1. The crab fishery is defined as any commercial harvest activity in which the target species is any member of the crab group (Order *Decapoda*, Suborder *Reptantia*).

2. The crab fishery shall be limited to one vessel per Member.

3. The total catch of crab from Statistical Subarea 48.3 shall not exceed 1 600 tonnes during the 1994/95 fishing season.

4. Each Member intending to participate in the crab fishery shall notify the CCAMLR Secretariat at least there months in advance of starting fishing of the name, type, size, registration number, radio call sign, and research and fishing operations plan of the vessel that the Member has authorized to participate in the crab fishery.

5. All vessels fishing for crab shall report the following data to CCAMLR by 31 August 1995 for crabs caught prior to 31 July 1995:

(i) The location, date, depth, fishing effort (number and spacing of pots and soak time), and catch (numbers and weight) of commercially sized crabs (reported on as fine a scale as possible, but no coarser than 0.5° latitude by 1° longitude) for each 10-day period;

(ii) The species, size, and sex of a representative subsample of crabs sampled according to the procedure set out in Annex 79/A (between 35 and 50 crabs shall be sampled every day from the line hauled just prior to noon) and by-catch caught in traps; and

(iii) Other relevant data, as possible, according to the requirements set out in Annex 79/A.

6. For the purposes of implementing this Conservation Measure, the 10-day catch and effort reporting system set out in Conservation Measure 61/XII shall apply.

7. Data on catches taken between 31 July 1995 and 31 August 1995 shall be reported to CCAMLR by 30 September 1995 so that the data will be available to the Working Group on Fish Stock Assessment.

8. Crab fishing gear shall be limited to the use of crab pots (traps). The use of all other methods of catching crabs (e.g., bottom trawls) shall be prohibited.

9. The crab fishery shall be limited to sexually mature male crabs—all female and undersized male crabs caught shall be released unharmed. In the case of *Paralomis spinosissima* and *P. formosa*, males with a minimum carapace width of 102 mm and 90 mm, respectively, may be retained in the catch.

10. Crab processed at sea shall be frozen as crab sections (minimum size of crabs can be determined using crab sections).

Conservation Measure 80/XIII

Limits on the Fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3 for the 1994/95 Season

This Conservation Measure is adopted in accordance with Conservation Measure 7/V:

1. The total catch of *Dissostichus eleginoides* in Statistical Subarea 48.3 caught during the 1994/95 season shall be limited to 2800 tonnes.

2. For the purposes of the fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3, the 1994/95 fishing season is defined as the period from 1 March to 31 August 1995, or until the TAC is reached, whichever is the sooner.

3. Each vessel participating in the *Dissostichus eleginoides* fishery in Statistical Subarea 48.3 in the 1994/95 season shall have a scientific observer, appointed in accordance with the Scheme of International Scientific Observation of CCAMLR, on board throughout all fishing activities within the fishing period.

4. For the purpose of implementing this Conservation Measure:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XII shall apply in the 1994/95 season, commencing on 1 March 1995;

(ii) The Effort and Biological Data Reporting System set out in Conservation Measure 81/XIII shall apply in the 1994/95 season, commencing on 1 March 1995.

Conservation Measure 81/XIII

Effort and Biological Data Reporting System for *Dissostichus eleginoides* in Statistical Subareas 48.3 and 48.4 for the 1994/95 Season

This Conservation Measure is adopted in accordance with Conservation Measure 7/V:

1. At the end of each month each Contracting Party shall obtain from each of its vessels the haul-by-haul data required to complete the CCAMLR fine-scale catch and effort data form for longline fisheries (Form C2, latest version). These data shall include numbers of seabirds or marine mammals of each species caught and released or killed. It shall transmit those data to the Executive Secretary not later than the end of the following month.

2. At the end of each month, each Contracting Party shall obtain from each of its vessels a representative sample of length composition measurements from the fishery (Form B2, latest version). It shall transmit those data to the Executive Secretary not later than the end of the following month.

3. For the purpose of implementing this Conservation Measure:

(i) Length measurements of fish should be of total length to the nearest centimeter below;

(ii) Representative samples of length composition should be taken from a single fishing ground.[1] In the event that the vessel moves from one fishing ground to another during the course of a month, then separate length compositions should be submitted for each fishing ground.

4. Should a Contracting Party fail to transmit the fine scale catch and effort data or length composition data to the Executive Secretary by the deadline specified in paragraph 2, the Executive Secretary shall issue a reminder to the Contracting Party. If at the end of a further two months those data have still not been provided the Executive Secretary shall notify all Contracting parties of the closure of the fishery to vessels of the Contracting Party which has failed to supply the data as required.

Conservation Measure 82/XIII

Protection of the Cape Shirreff CEMP Site

1. The Commission noted that a program of long-term studies is being undertaken at Cape Shirreff and the San Telmo Islands, Livingston Island, South Shetland Islands, as part of the CCAMLR Ecosystem Monitoring Program (CEMP). Recognizing that these studies may be vulnerable to accidental or willful interference, the Commission expressed its concern that this CEMP site, the scientific investigations, and the Antarctic marine living resources therein be protected.

2. Therefore, the Commission considers it appropriate to accord protection to the Cape Shirreff CEMP site, as defined in the Cape Shirreff management plan.

3. Members shall comply with the provisions of the Cape Shirreff CEMP site management plan, which is recorded in Annex C of Conservation Measure 18/IX.

4. To allow Members adequate time to implement the relevant permitting procedures associated with this measure and the management plan, Conservation 82/XIII shall become effective as of 1 May 1995.

5. In accordance with Article X, the Commission shall draw this Conservation Measure to the attention of any State that is not a Party to the Convention and whose nationals or vessels are present in the Convention Area.

Conservation Measure 84/XIII

Precautionary TAC for *Electrona carlsbergi* in Statistical Subarea 48.3 for the 1994/95 Season

This Conservation Measure is adopted in accordance with Conservation Measure 7/V:

1. For the purposes of this Conservation Measure the fishing season for *Electrona carlsbergi* is defined as the period from 5 November 1994 to the end of the Commission meeting in 1995.

2. The total catch of *Electrona carlsbergi* in the 1994/95 season shall not exceed 200 000 tonnes in Statistical Subarea 48.3.

3. In addition, the total catch of *Electrona carlsbergi* in the 1994/95 season shall not exceed 43 000 tonnes in the Shag Rocks region, defined as the area bounded by 52°30′S, 40°W; 52°30′S, 44°W; 54°30′S, 40°W and 54°30′S, 44°W.

4. In the event that the catch of *Electrona carlsbergi* is expected to exceed 20 000 tonnes in the 1994/95 season, a survey of stock biomass and age structure shall be conducted during that season by the principal fishing nations involved. A full report of this survey including data on stock biomass (specifically including area surveyed, survey design and density estimates), age structure and the biological characteristics of the by-catch shall be available for discussion at the 1995 meeting of the Working Group on Fish Stock Assessment.

5. The directed fishery for *Electrona carlsbergi* in Statistical Subarea 48.3 shall cose if the by-catch of any of the species named in Conservation Measure 85/XIII reaches its by-catch limit or if the total catch of *Electrona carlsbergi* reaches 200 000 tonnes, whichever comes first.

6. The directed fishery for *Electrona carlsbergi* in the Shag Rocks region shall close if the by-catch of any of the species named in Conservation Measure 85/XIII reaches its by-catch limite or if the total catch of *Electrona carlsbergi* reaches 43 000 tonnes, whichever comes first.

7. If, in the course of the directed fishery for *Electrona carlsbergi*, the by-catch of any one haul of any of the species named in Conservation Measure 85/XIII exceeds 5%, the fishing vessel shall move to another fishing ground within the subarea.

8. For the purpose of implementing this Conservation Measure:

(i) The Catch Reporting System set out in Conservation Measure 40/X shall apply in the 1994/95 season;

(ii) The Data Reporting System set out in Conservation Measure 54/XI shall apply in the 1994/95 season.

Conservation Measure 85/XIII

Limitation of the By-catch of *Notothenia gibberifrons, Chaenocephalus aceratus, Pseudochaenichthys georgianus, Notothenia rossii* and *Notothenia squamifrons,* in Statistical Subarea 48.3 for the 1994/95 Season.

This Conservation Measure is adopted in accordance with Conservation Measure 7/V:

In any directed fishery in Statistical Subarea 48.3, during the 1994/95 season commencing 5 November 1994, the by-catch of Notothenia gibberifrons shall not exceed 1 470 tonnes; the by-catch of *Chaenocephalus aceratus* shall not exceed 2 200 tonnes; and the by-catch of *Pseudochaenichthys georgianus, Notothenia rossii,* and *Notothenia squamifrons* shall not exceed 300 tonnes each.

Conservation Measure 86/XIII

Prohibition of Directed Fishery on *Champsocephalus gunnari* in Statistical Subarea 48.3 in the 1994/95 Season.

The Commission adopted this Conservation Measure in accordance with Conservation Measure 7/V:

Directed fishing on *Champsocephalus gunnari* is prohibited in Statistical Subarea 48.3 in the 1994/95 season, defined as the period from 5 November 1994 to the end of the Commission meeting in 1995.

[1] Pending the provision of a more appropriate definition, the term fishing ground is defined here as the area within a single fine-scale grid rectangle (0.5° latitude by 1° longitude).

Conservation Measure 87/XIII

Limitation of Total Catch of *Notothenia squamifrons* in Statistical Division 58.4.4 (Ob and Lena Banks) in the 1994/95 and 1995/96 Seasons

1. The total catch of *Notothenia squamifrons* for the entire two year period shall not exceed 1 150 tonnes, which shall be made up of 715 tonnes on Lena Bank and 435 tonnes on Ob Bank.

2. The two year period shall be from 5 November 1994 to the end of the Commission meeting in 1996.

3. For the purpose of implementing this conservation measure:

(i) The Five-day Catch and Effort reporting system set out in Conservation Measure 51/XII shall apply in the period 1994 to 1996 commencing on 5 November 1994;

(ii) The Monthly Effort and Biological Data Reporting System set out in Conservation Measure 52/XI shall apply for the target species *Notothenia squamifrons,* and the by-catch species *Dissostichus eleginoides* commencing on 5 November 1994;

(iii) Data on the numbers of seabirds of each species killed or injured in incidents involving the net monitor cable shall also be reported to the Commission;

(iv) Age frequency, length frequency and age/length keys for *Notothenia squamifrons, Dissostichus eleginoides* and any other species forming a significant part of the catch shall be collected and reported to each annual meeting of the Working Group on Fish Stock Assessment for each Bank separately on forms B2 and B3; and

(v) The Fishery for *Notothenia squamifrons* will be subject to review at the 1995 annual meetings of the Scientific Committee and the Commission.

4. Each vessel participating in the fishery in Statistical Division 58.4.4 in the 1994/95 and 1995/96 seasons shall have a scientific observer, appointed in accordance with the Scheme of International Scientific Observation of CCAMLR, on board throughout all fishing activities within the fishing period.

Resolution Adopted in 1994

Resolution 11/XIII

Cape Shirreff CEMP Protected Area

1. The Commission noted that a program of long-term studies is being undertaken and is planned at Cape Shirreff and the San Telmo Islands, Livingston Island, South Shetland Islands, as part of the CCAMLR Ecosystem Monitoring Program (CEMP). Recognizing that these studies may be vulnerable to accidental or willful interference, the Commission expressed its concern that this CEMP site, the scientific investigations, and the Antarctic marine living resources therein be protected.

2. Therefore, the Commission considers it appropriate to accord protection to Cape Shirreff and the San Telmo Islands by establishing the ''Cape Shirreff CEMP Protection Area''.

3. Members are requested to comply, on a voluntary basis, with the provisions of the management plan for the Cape Shirreff CEMP Protected Area, until such time as Conservation Measure 82/XIII comes into effect.

4. It was agreed that, in accordance with Article X, the Commission would draw this Resolution to the attention of any State that is not a Party to the Convention and whose nationals or vessels are present in the Convention Area.

Other Conservation Measures in Force

The Commission agreed that Conservation Measures 2/III (as amended by 19/IX which came into force on 1 November 1991 except for waters adjacent to Kerguelen and Crozet Islands), 3/IV, 4/V, 5/V, 6/V, 7/V, 19/IX, 30/X (which came into force on 3 May 1992, except for waters adjacent to Kerguelen Crozet Islands), 31/X (which came into force on May 1992, except for waters around Kerguelen and Crozet Islands and around the Prince Edward Islands), 40/X, 45/XI, 51/XII, 52/XI, 54/XI, 61/XII, 62/XI, 63/XII, 64/XII, 65/XII, 72/XII, 73/XII, 75/XII, should remain in force.[1]

Catch Reporting

Catches of *E. carlsbergi* shall be reported to the Secretariat at the end of each calendar month, according to the system described in Conservation Measure 40/X. In addition, biological data should be reported every month in accordance with Conservation Measure 54/XI.

Catches of *D. eleginoides* shall be reported to the Secretariat at the end of five-day intervals, according to the system described in Conservation Measure 51/XII. In addition, biological data should be reported every month in accordance with Conservation Measure 81/XIII.

Catches of *C. gunnari* shall be reported to the Secretariat at the end of five-day intervals, according to the system described in Conservation Measures 51/XII. In addition, biological data should be reported every month in accordance with Conservation Measure 52/XI.

Catches of *N. Squamifrons* shall be reported to the Secretariat at the end of five-day intervals, according to the system described in Conservation Measure 51/XII. In addition, biological data should be reported every month in accordance with Conservation Measure 52/XI.

Catches of crabs shall be reported to the Secretariat at the end of ten-day intervals, according to the system described in Conservation Measure 61/XII. In addition, data on all crabs caught caught prior to 31 July 1995 shall be reported to CCAMLR by 31 August 1995, in accordance with Conservation Measures 79/XIII.

Catches for scientific research shall be reported to the Secretariat according to the CCAMLR within season catch and effort reporting systems whenever the catch within the period exceeds five tons, unless more specific regulations apply to the particular species.

[1] Conservation Measures 5/V and 6/V, which prohibit directed fishing for *Notothenia rossii* in Subareas 48.1 and 48.2 respectively, remain in force but are currently encompassed within the provisions in Conservation Measures 72/XII and 73/XII.

Dated: January 6, 1995.

R. Tucker Scully,

Director, Office of Oceans Affairs.

[FR Doc. 95–1280 Filed 1–18–95; 8:45 am]

BILLING CODE 4710–09–M

[Public Notice No. 2149]

United States International Telecommunications Advisory Committee (ITAC): Study Groups B and D; Meeting

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Study Group B Group will meet on Thursday, March 30, 1995 at 9:30 a.m., Room 1912 of the Department of State, and that Study Group D will also hold a meeting: The meeting of Study Group D will be held on Wednesday, March 29, 1995, Room 1205, at 9:30 a.m. Both meetings will be held at the Department of State, in the rooms notified herein, 2201 C Street NW., Washington, DC 20520.

The agenda for Study Group D will include a report of the March meeting of ITU–T Study Group 8, and consideration of U.S.A. and company contributions to the April meeting of ITU–T Study Group 14, as well as the June meeting of ITU–T Study Group 7. Other matters within the competence of Study Group D, including Rapporteur meeting reports may be considered during that meeting.

The agenda for Study Group B will include a review of the results of the ITU–T Study Group 10 meeting (October 1994) as well as the results of the November Study Group 13 meeting. Consideration of contributions to upcoming meetings of ITU–T Study Group 11 in April, 1995 and the ITU–T Study Group 9 meeting, in June of 1995 will also be considered on the agenda of that meeting. Persons presenting contributions to Study Group D should bring 20 copies of such contributions to the meeting. Persons presenting contributions to the meeting of Study Group B should bring 35 copies.

Members of the General Public may attend and join in the discussions, subject to the control of the Chair. Persons intending to attend the above U.S. Study Group Meetings must announce this not later than 5 days before the meeting to the Department of State, 202–647–0201 (fax: 202–647–7407). The announcement must include name, social security number, and date of birth. The above includes government and non-government attendees. All attendees must use the ''C'' Street

entrance. A picture ID will be required for admittance.

Dated: January 5, 1995.

Earl S. Barbely,

Chairman, U.S. ITAC for IUT–T Telecommunications Standardization Sector.

[FR Doc. 95–1227 Filed 1–18–95; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application to Impose Only and Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Meadows Field, Bakersfield, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to impose only, and impose and use PFC revenue from a PFC at Meadows Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508 as recodified by Title 49 U.S.C. 40117 (c)(3) and 14 CFR, Part 158. On December 21, 1994, the FAA determined that the application to use from a PFC submitted by the County of Kern was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 30, 1995.

DATES: Comments must be received on or before February 21, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Airports Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA., 90009. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. David Price III, Director, Kern County Airports Department, 1401 Skyway Dr., Suite 200, Bakersfield, California, 93308–1697. Comments from air carriers may be in the same form as provided to the Kern County Airports Department under section 158.23 of FAR Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Milligan, Supervisor Standards Section, Airports Division, P.O. Box 92007, WPC, Los Angeles, CA 90009, Telephone: (310) 297–1029. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose only and impose and use the revenue from a PFC at Meadows Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508 as recodified by Title 49 U.S.C. 40117 (c)(3) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). On December 21, 1994, the FAA determined that the application to impose only and impose and use the revenue from a PFC submitted by the County of Kern was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 30, 1995.

The Following is a Brief Overview of the Application

Level of the Proposed PFC: $3.00.

Proposed Charge Effective Date: June 1, 1994.

Proposed Charge Expiration Date: December 31, 1999.

Total Estimated PFC Revenue: $888,700.

Brief description of the proposed projects—Impose and Use:

Acquire Land, ASR Critical Area—Total $464,400.

Overlay Runway 12L/30R—Total $123,800

Overlay Taxiway Alpha—Total $67,000.

Stabilize Shoulders, Runway 12L/30R—Total $42,200.

Renovate Airfield Signage—Total $44,000.

Remove Obstruction, Runway 12L O.F.Z.—Total $12,400.

Acquire Land, Runway 12L O.F.Z.—Total $11,800.

Purchase ADA Aircraft Boarding Device—Total $3,100.

Impose only:

Construct ARFF Station—Total $120,000.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application, in person at the Kern County Airports Department Office.

Issued in Hawthorne, California, on December 28, 1994.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 95–1264 Filed 1–18–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In December 1994, there were seven applications, one amendment, and one supplemental application approved.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of 49 U.S.C. 40117 (Pub. L. 103–272) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of section 158.29.

PFC Applications Approved

Public Agency: Virgin Islands Port Authority, Charlotte Amalie, St. Thomas, Virgin Islands.

Application Number: 94–02–U–00–STT.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $3,871,005.

Charge Effective Date: March 1, 1993.

Estimated Charge Expiration Date: February 1, 1995.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved To Use PFC Revenue: Airfield improvements (runway completion), Install airport security system, Airfield improvement (runway resurfacing).

Decision Date: December 1, 1994.

FOR FURTHER INFORMATION CONTACT: Ilia Quinones, Orlando Airports District Office, (407) 648–6583.

Public Agency: City of Durango Council and La Plata County Board of County Commission, Durango, Colorado.

Application Number: 94–01–C–00–DRO.

Application Type: Impose and use PFC revenue.

PFC Level: $3.00.

Total Approved Net Use PFC Revenue: $479,556.

Charge Effective Date: February 1, 1995.

Estimated Charge Expiration Date: February 1, 1997.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved For Collection and Use: Acquire 250 acres of land, Acquire 10 acres of land, Install security access control system and airport guidance signs, Update airport master plan, Acquire passenger lift device, Rehabilitate taxiway ''A'' (North).

Brief Description of Project Partially Approved For Collection and Use: Design and construct aircraft rescue and firefighting (ARFF)/snow removal equipment (SRE) building.

Determination: Partially approved. a portion of this project is eligible under Airport Improvement Program (AIP) criteria, paragraphs 562(e), (f), and 567(a) of FAA Order 5199.38A, AIP Handbook. Durango-La Plata County Airport (DRO) is classified as an Index B airport under Part 139. Eligibility for the portion of the building to house ARFF equipment is limited to the space needed to house the vehicles authorized by Part 139. The portion of the building for storage of SRE is limited to the space needed to house the equipment authorized by Advisory Circulars 150/5200–30A and 5220–20. The amount approved for PFC collection reflects the local share of the eligible portion of this project.

Brief Description of Project Disapproved For Collection and Use: Relocate County Road 309–A.

Determination: Disapproved. The FAA has determined that sufficient data is not available to make an environmental determination, as required under section 158.29(b)(b)(iv), at this time. The environmental supporting data is being coordinated with the Corps of Engineers and the FAA has not yet received the Corps of Engineers determination. There are possible impacts from a wetlands perspective and/or from an archeological perspective which need to be verified before approval can be given for this project.

Decision Date: December 1, 1994.

FOR FURTHER INFORMATION CONTACT: Dakota Chamberlain, Denver Airports District Office, (303) 286–5543.

Public Agency: The Friedman Memorial Airport Authority (Authority), Hailey, Idaho.

Application Number: 94–02–C–00–SUN.

Application Type: Impose and use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $144,637.

Charge Effective Date: March 1, 1995.

Estimated Charge Expiration Date: January 1, 1996.

Class of Air Carriers Not Required To Collect PFC's: Part 135 air taxi/commercial operators with a seating capacity of less than 10 seats.

Determination: Approved. Based on information submitted in the Authority's application, the FAA has determined that the proposed class accounts for less than 1 percent of Friedman Memorial Airport's (SUN) total annual enplanements.

Brief Description of Projects Approved For Collection and Use: Rehabilitation of air carrier/general aviation ramp, Americans with Disabilities Act ramp for departure area of terminal, Rehabilitate runway 1331 (resurface with a porous friction course), Environmental assessment for SUN master plan update and first phase development, Purchase of snow removal equipment, Aircraft rescue and firefighting (ARFF) upgrade/purchase, Extend sewer line, repair access road and construct terminal loop road.

Decision Date: December 12, 1994.

FOR FURTHER INFORMATION CONTACT: Sandra M. Simmons, Seattle Airports District Office, (206) 227–2656.

Public Agency: City of San Jose, San Jose, California.

Application Number: 94–04–U–00–SJC.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $30,313,826.

Charge Effective Date: September 1, 1992.

Estimated Charge Expiration Date: August 1, 1995.

Class of Air Carriers Not Required to Collect PFC's: The City of Jose has previously been approved to exclude air taxi/commercial operators filing FAA Form 1800–31 in the FAA's June 11, 1992, Record of Decision.

Determination. No change from previously approved application.

Brief Description of Projects Approved for Use: Control tower site restoration, Fire station remodel.

Decision Date: December 14, 1994.

FOR FURTHER INFORMATION CONTACT: Joseph R. Riodriquez, San Francisco Airports District Office, (415) 876–2805.

Public Agency: Fort Dodge Regional Airport Commission, Fort Dodge, Iowa.

Application Number: 94–01–C–00–FOD.

Application Type: Impose and use PFC revenue.

PFC Level: $3.00.

Total Approved PFC Revenue: $157,221.

Charge Effective Date: March 1, 1995.

Estimated Charge Expiration Date: April 1, 2000.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use: Runway 12/30 overlay and taxiway B and D slurry seal, Installation of Part 139 airfield signs, Taxiway A slurry seal, Taxiway C slurry seal, Replace airfield lighting, Install safety perimeter fence.

Decision Date: December 19, 1994.

FOR FURTHER INFORMATION CONTACT: Ellie Anderson, Central Region Airports Division, (816) 426–4728.

Public Agency: Port of Oakland (Port), Oakland, California.

Application Number: 94–03–C–00–OAK.

Application Type: Impose and use PFC revenue.

PFC Level: $3.00.

Total Approved PFC Revenue: $15,827,091.

Charge Effective Date: April 1, 1995.

Estimated Charge Expiration Date: September 1, 1996.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators exclusively filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the Port's application, the FAA has determined that the proposed class accounts for less than 1 percent of the Metropolitan Oakland International Airport's total annual enplanements.

Brief Description of Projects Approved for Collection and Use: Construct gate 26A holdroom, Purchase and install aircraft loading bridge for gate 26A, Taxiway B shoulder improvements, Design north field aircraft parking apron between taxiway O and runway 15/33, Design and contruct right-turn lane onto Neil Armstrong Way from Airport Drive.

Brief Description of Projects Approved for Collection: Construct north field aircraft parking apron between taxiway O and runway 15/33, Construct ARFF facility.

Brief Description of Project Disapproved: Install security system at gate M–45.

Determination: Disapproved. This project was previously disapproved in the Record of Decision for the 94–02–C–00–OAK application. In that disapproval, the FAA stated that this project was in excess of the minimum required to meet Part 107 requirements and, therefore, was not PFC eligible. In the latest submission, the Port stated that the project had been submitted to the FAA's Civil Aviation Security Field Office (CASFO) for approval. On September 12, 1994, the San Francisco Airports District Office was informed by the CASFO that the present system is

already in compliance with Part 107 and the proposal would constitute an enhancement to that system. As a result, this project is judged to be in excess of the minimum required to meet part 107 requirements and, as such, is not PFC eligible.

Decision Date: December 23, 1994.

FOR FURTHER INFORMATION CONTACT: Joseph R. Rodriquez, San Francisco Airports District Office, (415) 876–2805.

Public Agency: Brainerd-Crow Wing County Regional Airport Commission (Commission), Brainerd, Minnesota.

Application Number: 94–02–C–00–BRD.

Application Type: Impose and use PFC revenue.

PFC Level: $3.00.

Total Approved PFC Revenue: $271,345.

Charge Effective Date: March 1, 1995.

Estimated Charge Expiration Date: August 1, 2001.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators.

Determination: Approved. Based on information submitted in the Commission's application, the FAA has determined that the proposed class accounts for less than 1 percent of Brainerd-Crow County Regional Airport's total annual enplanements.

Brief Description of Project Approved for Collection and Use: Install deer fence and construct segmented circle, Crack repair, seal coat, and remark pavement and construct heliport taxiway and helicopter parking apron, Refurbish terminal building, construct heliport access road and vehicle parking lot, relocate airport beacon, prepare environmental assessment for runway 5 medium intensity approach light system with runway alignment indicator lights and localizer, and update airport layout plan/land inventory map, Reimbursement for 1993 PFC application administration costs, Environmental assessment engineering support, Reimbursement for 1994 PFC application, administration costs, Federal environmental impact statement, Install medium intensity taxiway edge lights, High speed snow plow replacement, Loader/bucket, Safety fencing, Airline terminal development.

Brief Description of Projects Partially Approved for Collection and Use: Fire alarm system.

Determination: Partially approved. Costs related to the general aviation terminal are ineligible. Airline and general aviation terminal buildings design services.

Determination: Partially approved. Costs related to administrative (nonepublic use) areas, conference/press room, the restaurant, and general aviation terminal are not eligible areas.

Brief Description of Projects Disapproved: General aviation terminal remodeling.

Determination: Disapproved. The FAA has determined that general aviation terminals are ineligible for Airport Improvement Program funding; therefore, this project is not PFC eligible. 1995 and 1996 pavement crack seal and crack repair.

Determination: Disapproved. This project does not meet the criteria contained in paragraphs 520(a)(1)(1a) and 520(a)(1)(b) of FAA Order 5100.38A, AIP Handbook (October 24, 1989); therefore, this project does not meet the requirement of section 158.15(b)(1) and is not PFC eligible.

Decision Date: December 27, 1994.

FOR FURTHER INFORMATION CONTACT: Gordon Nelson, Minneapolis Airports District Office, (612) 725–4358.

Supplement to PFC Application Approved

Public Agency: Broward County Aviation Department (BCAD), Fort Lauderdale, Florida.

Application Number: 94–01–C–00–FLL.

Application Type: Impose and use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue in the Supplemental Record of Decision: $28,973,000.

Charge Effective Date: January 1, 1995.

Estimated Charge Expiration Date: August 1, 1999.

Class of Air Carriers Not Required To Collect PFC's: The BCAD has previously been approved to exclude air taxi/commercial operators in the FAA's November 1, 1994, Record of Decision.

Determination: No change from previously approved application.

Brief Description of Project Approved for Collection and Use: Land acquisition for approach area and transitional zones.

Decision Date: December 9, 1994.

FOR FURTHER INFORMATION CONTACT: Ilia Quinones, Orlando Airports District Office, (407) 648–6583.

Amendments to PFC Approvals

Amendment Number; City, State	Amendment Approved Date	Original Approved Net PFC Revenue	Amended Approved Net PFC Revenue	Original Estimated Charge Exp. Date	Amended Estimated Charge Exp. Date
93–01–C–01–LEX; Lexington, KY	06/23/94	$12,378,791	$16,220,915	05/01/03	05/01/05

Issued in Washington, D.C. on January 11, 1995.

Donna Taylor,

Manager, Passenger Facility Charge Branch.

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED

State; application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
Alabama					
92–01–I–00–HSV, Huntsville Intl—Carl T. Jones Field, Huntsville	03/06/1992	$3	$20,831,051	06/01/1992	11/01/2008
93–02–U–00–HSV, Huntsville Intl—Carl T. Jones Field, Huntsville	06/03/1993	3	0	09/01/1993	11/01/2008
94–03–C–00–HSV, Huntsville Intl—Carl T. Jones Field, Huntsville	06/29/1994	3	0	09/01/1994	11/01/2008
92–01–C–00–MSL, Muscle Shoals Regional, Muscle Shoals	02/18/1992	3	100,000	06/01/1992	02/01/1995
94–02–C–00–MSL, Muscle Shoals Regional, Muscle Shoals	05/17/1994	3	60,000	08/01/1994	10/01/1996

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State; application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
Arizona					
92–01–C–00–FLG, Flagstaff Pulliam, Flagstaff	09/29/1992	3	2,463,581	12/01/1992	01/01/2015
93–01–C–00–YUM, Yuma MCAS/YUMA International, YUMA	09/09/1993	3	1,678,064	12/01/1993	06/01/2003
Arkansas					
94–01–I–00–FSM, Fort Smith Municipal, Fort Smith	05/18/1994	3	4,040,076	08/01/1994	04/01/2007
94–01–C–00–TXK, Texarkana Regional—Webb Field, Texarkana	11/21/1994	3	414,459	02/01/1995	01/01/1999
California					
92–01–C–00–ACV, Arcata, Arcata	11/24/1992	3	188,500	02/01/1993	05/01/1994
94–02–C–00–ACV, Arcata, Arcata	08/23/1994	3	369,500	11/01/1994	11/01/1996
94–01–C–00–BUR, Burbank-Glendale-Pasadena, Burbank	06/17/1994	3	34,989,000	09/01/1994	10/01/2001
93–01–C–00–CIC, Chico Municipal, Chico	09/29/1993	3	137,043	01/01/1994	06/01/1997
92–01–C–00–IYK, Inyokern, Inyokern	12/10/1992	3	127,500	03/01/1993	09/01/1995
93–01–C–00–LGB, Long Beach—Daugherty Field, Long Beach	12/30/1993	3	3,533,766	03/01/1994	03/01/1998
93–01–C–00–LAX, Los Angeles International, Los Angeles	03/26/1993	3	360,000,000	07/01/1993	07/01/1998
94–01–C–00–MOD, Modesto City-County Arpt—Harry Sham, Modesto	05/23/1994	3	300,370	08/01/1994	08/01/2001
93–01–C–00–MRY, Monterey Peninsula, Monterey	10/08/1993	3	3,960,855	01/01/1994	06/01/2000
94–02–U–00–MRY, Monterey Peninsula, Monterey	10/31/1994	0	0	02/01/1995	06/01/2000
92–01–C–00–OAK, Metropolitan Oakland International, Oakland	06/26/1992	3	12,343,000	09/01/1992	05/01/1994
94–02–C–00–OAK, Metropolitan Oakland International, Oakland	02/23/1994	3	8,999,000	05/01/1994	04/01/1995
93–01–I–00–ONT, Ontario International, Ontario	03/26/1993	3	49,000,000	07/01/1993	07/01/1998
92–01–C–00–PSP, Palm Springs Regional, Palm Springs	06/25/1992	3	81,888,919	10/01/1992	11/01/2032
92–01–C–00–SMF, Sacramento Metropolitan, Sacramento	01/26/1993	3	24,045,000	04/01/1993	03/01/1996
92–01–C–00–SJC, San Jose International, San Jose	06/11/1992	3	29,228,826	09/01/1992	08/01/1995
93–02–U–00–SJC, San Jose International, San Jose	02/22/1993	3	0	05/01/1993	08/01/1995
93–03–C–00–SJC, San Jose International, San Jose	06/16/1993	3	130,000	08/01/1995	08/01/1995
92–01–C–00–SBP, San Luis Obispo County—McChesney Field, San Luis Obispo	11/24/1992	3	502,437	02/01/1993	02/01/1995
92–01–C–00–STS, Sonoma County, Santa Rosa	02/19/1993	3	110,500	05/01/1993	04/01/1995
94–02–C–00–STS, Sonoma County, Santa Rosa	07/13/1994	3	272,365	10/01/1994	07/01/1997
91–01–I–00–TVL, Lake Tahoe, South Lake Tahoe	05/01/1992	3	928,747	08/01/1992	03/01/1997
Colorado					
92–01–C–00–COS, City of Colorado Springs Municipal, Colorado Springs	12/22/1992	3	5,622,000	03/01/1993	02/01/1996
92–01–C–00–DVX, Denver International (New), Denver	04/28/1992	3	2,330,734,321	07/01/1992	01/01/2026
93–01–C–00–EGE, Eagle County Regional, Eagle	06/15/1993	3	572,609	09/01/1993	04/01/1998
93–01–C–00–FNL, Fort Collins-Loveland, Fort Collins	07/14/1993	3	207,857	10/01/1993	06/01/1996
92–01–C–00–GJT, Walker Field, Grand Junction	01/15/1993	3	1,812,000	04/01/1993	03/01/1998
93–01–C–00–GUC, Gunnison County, Gunnison	08/27/1993	3	702,133	11/01/1993	03/01/1998
93–01–C–00–HDN, Yampa, Valley, Hayden	08/23/1993	3	532,881	11/01/1993	04/01/1997
93–01–C–00–MTJ, Montrose County, Montrose	07/29/1993	3	1,461,745	11/01/1993	02/01/2009
93–01–C–00–PUB, Pueblo Memorial, Pueblo	08/16/1993	3	1,200,745	11/01/1993	08/01/2010
92–01–C–00–SBS, Steamboat Springs/Bob Adams Field, Steamboat Springs	01/15/1993	3	1,887,337	04/01/1993	04/01/2012
92–01–C–00–TEX, Telluride Regional, Telluride	11/23/1992	3	200,000	03/01/1993	11/01/1997
Connecticut					
93–01–C–00–HVN, Tweed–New Haven, New Haven	09/10/1993	3	2,490,450	12/01/1993	06/01/1999
93–02–I–00–BDL, Bradley International, Windsor Locks	07/09/1993	3	12,030,000	10/01/1993	09/01/1995
94–03–U–00–BDL, Bradley International, Windsor Locks	02/22/1994	3	0	05/01/1994	09/01/1995
Florida					
93–01–C–00–DAB, Daytona Beach International, Daytona Beach	04/20/1993	3	7,967,835	07/01/1993	11/01/1999
94–01–C–00–FLL, Fort Lauderdale-Hollywood International, Fort Lauderdale	11/01/1994	3	73,609,000	01/01/1995	08/01/1999
92–01–C–00–RSW, Southwest Florida International, Fort Myers	08/31/1992	3	253,858,512	11/01/1992	06/01/2014
93–02–U–00–RSW, Southwest Florida International, Fort Myers	05/10/1993	3	0	11/01/1992	06/01/2014
94–03–U–00–RSW, Southwest Florida International, Fort Myers	11/04/1994	3	0	02/01/1995	08/01/2018
93–01–C–00–JAX, Jacksonville International, Jacksonville	01/28/1994	3	12,258,255	05/01/1994	07/01/1997
92–01–C–00–EYW, Key West International, Key West	12/17/1992	3	945,937	03/01/1993	12/01/1995
94–02–C–00–EYW, Key West International, Key West	11/14/1994	3	1,110,333	02/01/1995	03/01/1997
92–01–C–00–MTH, Marathon, Marathon	12/17/1992	3	153,556	03/01/1993	06/01/1995
94–01–C–00–MIA, Miami International, Miami	08/19/1994	3	64,770,000	11/01/1994	08/01/1996
94–01–C–00–APF, Naples Municipal, Naples	11/23/1994	3	470,000	02/01/1995	02/01/1998
92–01–C–00–MCO, Orlando International, Orlando	11/27/1992	3	167,574,527	02/01/1993	02/01/1998
93–02–C–00–MCO, Orlando International, Orlando	09/24/1993	3	12,957,000	12/01/1993	02/01/1998
93–01–I–00–PFN, Panama City–Bay County International, Panama City	12/01/1993	3	8,238,499	02/01/1994	10/01/2007
92–01–C–00–PNS, Pensacola Regional, Pensacola	11/23/1992	3	4,715,000	02/01/1993	04/01/1996
92–01–I–00–SRO, Sarasota-Bradenton International, Sarasota	06/29/1992	3	38,715,000	09/01/1992	09/01/2005
92–01–I–00–TLH, Tallahassee Regional, Tallahassee	11/13/1992	3	8,617,154	02/01/1993	12/01/1998

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State; application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
93–02–U–00–TLH, Tallahassee Regional, Tallahassee	12/30/1993	0	0	02/01/1993	12/01/1998
93–01–C–00–TPA, Tampa International, Tampa	07/15/1993	3	87,102,000	10/01/1993	09/01/1999
94–02–U–00–TPA, Tampa International, Tampa	11/15/1994	3	0	02/01/1995	09/01/1999
93–01–C–00–PBI, Palm Beach International, West Palm Beach	01/26/1994	3	38,801,096	04/01/1994	04/01/1999
Georgia					
93–01–C–00–CSG, Columbus Metropolitan, Columbus	10/01/1993	3	534,633	12/01/1993	06/01/1995
91–01–C–00–SAV, Savannah International, Savannah	01/23/1992	3	39,501,502	07/01/1992	03/01/2004
92–01–I–00–VLD, Valdosta Regional, Valdosta	12/23/1992	3	260,526	03/01/1993	10/01/1997
Idaho					
94–01–C–00–BOI, Boise Air Terminal—Gowen Field, Boise	05/13/1994	3	6,857,774	08/01/1994	10/10/1998
93–01–C–00–Sun, Friedman Memorial, Hailey	06/29/1993	3	188,000	09/01/1993	09/01/1997
92–01–C–00–IDA, Idaho Falls Municipal, Idaho Falls	10/30/1992	3	1,500,000	1/01/1993	01/01/1998
94–01–I–00–LWS, Lewiston—Nez Perce County, Lewiston	02/03/1994	3	229,610	05/01/1994	03/01/1997
94–01–C–00–PIH, Pocatello Regional, Pocatello	06/30/1994	3	400,000	10/01/1994	03/01/2002
92–01–C–00–TWF, Twin Falls-Sun Valley Regional, Twin Falls	08/12/1992	3	270,000	11/01/1992	05/01/1993
Illinois					
94–01–C–00–BMI, Bloomington/Normal, Bloomington/Normal	08/30/1994	3	3,855,012	11/01/1994	05/01/2010
93–01–C–00–MDW, Chicago Midway, Chicago	06/28/1993	3	79,920,958	09/01/1993	08/01/2001
94–02–U–00–MDW, Chicago Midway, Chicago	09/06/1994	3	0	12/01/1994	08/01/2001
93–01–C–00–ORD, Chicago O'Hare International, Chicago	06/28/1993	3	500,418,285	09/01/1993	10/01/1999
94–02–U–00–ORD, Chicago O'Hare International, Chicago	09/16/1994	3	0	12/01/1994	10/01/1999
94–01–C–00–MLI, Quad-City, Moline	09/29/1994	3	11,582,995	12/01/1994	11/01/2008
94–01–C–00–PIA, Greater Peoria Regional, Peoria	09/08/1994	3	4,083,195	12/01/1994	05/31/2001
94–01–C–00–UIN, Quincy Municipal Baldwin Field, Quincy	07/08/1994	3	115,517	10/01/1994	07/01/1994
92–01–I–00–RFD, Greater Rockford, Rockford	07/24/1992	3	1,177,348	10/01/1992	10/01/1996
93–02–U–00–RFD, Greater Rockford, Rockford	09/02/1993	0	0	12/01/1993	10/01/1996
93–01–I–00–SPI, Capital, Springfield	03/27/1992	3	562,104	06/01/1992	02/01/1994
93–02–U–00–SPI, Capital, Springfield	04/28/1993	3	0	06/01/1992	02/01/1994
93–03–I–00–SPI, Capital Springfield	11/24/1993	3	4,585,443	06/01/1992	02/01/2006
Indiana					
92–01–C–00–FWA, Fort Wayne International, Fort Wayne	04/05/1993	3	26,563,457	07/01/1993	03/01/2015
93–01–C–00–IND, Indianapolis International, Indianapolis	06/28/1993	3	117,344,750	09/01/1993	07/01/2005
94–01–C–00–SBN, Michiana Regional, South Bend	08/26/1994	3	9,185,403	11/01/1994	12/31/2003
Iowa					
94–01–I–00–CID, Cedar Rapids Municipal, Cedar Rapids	10/26/1994	3	6,330,000	01/01/1995	02/01/2001
93–01–C–00–DSM, Des Moines Municipal, Des Moines	11/29/1993	3	6,446,507	03/01/1994	04/01/1997
92–01–I–00–DBQ, Dubuque Regional, Dubuque	10/06/1992	3	148,500	01/01/1993	05/01/1994
94–02–C–00–DBQ, Dubuque Regional, Dubuque	02/09/1994	3	203,420	05/01/1994	02/01/1996
93–01–C–00–SUX, Sioux Gateway, Sioux City	03/12/1993	3	204,465	06/01/1993	06/01/1994
94–02–C–00–11–SUX, Sioux Gateway, Sioux City	11/09/1994	3	2,389,030	02/01/1995	06/01/2006
94–01–C–00–ALO, Waterloo Municipal, Waterloo	03/29/1994	3	637,000	06/01/1994	06/01/1998
Kansas					
94–01–C–00–ICT, Wichita Mid-Continent, Wichita	09/29/1994	3	4,259,535	12/01/1994	11/01/1997
Kentucky					
94–01–C–00–CVG, Cincinnati/Northern Kentucky International, Covington	03/30/1994	3	20,737,000	06/01/1994	09/01/1995
93–01–C–00–LEX, Blue Grass, Lexington	08/31/1993	3	12,378,791	11/01/1993	05/01/2003
93–01–C–00–PAH, Barkley Regional, Paducah	12/02/1993	3	386,550	03/01/1994	12/01/1998
Louisiana					
92–01–I–00–BTR, Baton Rouge Metropolitan, Ryan Field, Baton Rouge	09/28/1992	3	9,823,159	12/01/1992	12/01/1998
93–02–U–00–BTR, Baton Rouge Metropolitan, Ryan Field, Baton Rouge	04/23/1993	3	0	12/01/1992	12/01/1998
93–01–C–00–MSY, New Orleans International/Moisant Field, New Orleans	03/19/1993	3	77,800,372	06/01/1993	04/01/2000
93–02–U–00–MSY, New Orleans International/Moisant Field, New Orleans	11/16/1993	3	0	06/01/1993	04/01/2000
93–01–I–00–SHV, Shreveport Regional, Shreveport	11/19/1993	3	33,050,278	02/01/1994	02/01/2019
Maine					
93–01–C–00–PWM, Portland International Jetport, Portland	10/29/1993	3	12,233,751	02/01/1994	05/01/2001
Maryland					
92–01–I–00–BWI, Baltimore-Washington International, Baltimore	07/27/1992	3	141,866,000	10/01/1992	09/01/2002
94–02–C–00–BWI, Baltimore-Washington International, Baltimore	08/09/1994	3	144,727,094	11/01/1994	04/01/2009
94–01–I–00–CBE, Greater Cumberland Regional, Cumberland	03/30/1994	3	150,000	07/01/1994	07/01/1999

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State; application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
Massachusetts					
93–01–C–00–BOS, General Edward L. Logan International, Boston	08/24/1993	3	604,794,000	11/01/1993	10/01/2011
92–01–C–00–ORH, Worchester Municipal, Worchester	07/28/1992	3	2,301,382	10/01/1992	10/01/1997
Michigan					
92–01–C–00–DTW, Detroit Metropolitan-Wayne County, Detroit	09/21/1992	3	640,707,000	12/01/1992	06/01/2009
92–01–I–00–ESC, Delta County, Escanaba	11/17/1992	3	158,325	02/01/1993	08/01/1996
93–01–C–00–FNT, Bishop International, Flint	06/11/1993	3	32,296,450	09/01/1993	09/01/2030
92–01–I–00–GRR, Kent County International, Grand Rapids	09/09/1992	3	12,450,000	12/01/1992	05/01/1998
92–01–C–00–CMX, Houghton County Memorial Hancock	04/29/1993	3	162,986	07/01/1993	01/01/1996
94–02–U–00–CMX, Houghton County Memorial, Hancock	11/09/1994	0	0	02/01/1995	01/01/1996
93–01–C–00–IWD, Gogebic County, Ironwood	05/11/1993	3	74,690	08/01/1993	10/01/1998
93–01–C–00–LAN, Capital City, Lansing	07/23/1993	3	7,355,483	10/01/1993	03/01/2002
92–01–I–00–MQT, Marquette County, Marquette	10/01/1992	3	459,700	12/01/1992	04/01/1996
94–02–U–00–MQT, Marquette County, Marquette	04/06/1994	3	0	07/01/1994	04/01/1996
94–01–C–00–MKG, Muskegon County, Muskegon	02/24/1994	3	5,013,088	05/01/1994	05/01/2019
92–01–C–00–PLN, Pellston Regional—Emmet County, Pellston	12/22/1992	3	440,875	03/01/1993	06/01/1998
94–02–U–00–PLN, Pellston Regional—Emmet County, Pellston	10/18/1994	3	0	01/01/1995	08/01/1997
Minnesota					
93–01–C–00–BRD, Brainerd—Crow Wing County Regional, Brainerd	05/25/1993	3	43,000	08/01/1993	12/31/1995
94–01–C–00–DLH, Duluth International, Duluth	07/01/1994	3	562,248	10/01/1994	04/01/1996
94–02–C–00–INL, Falls International, International Falls	09/24/1994	3	243,537	12/01/1994	12/01/1998
92–01–C–00–MSP, Minneapolis-St. Paul International, Minneapolis	03/31/1992	3	66,355,682	0-6/01/1992	08/01/1994
94–02–C–00–MSP, Minneapolis-St. Paul International, Minneapolis	05/13/1994	3	113,064,000	08/01/1994	06/01/1998
Mississippi					
91–01–C–00–GTR, Golden Triangle Regional, Columbus	05/08/1992	3	1,693,211	08/01/1992	09/01/2006
92–01–C–00–GPT, Gulfport-Biloxi Regional, Gulfport-Biloxi	04/03/1992	3	390,595	07/01/1992	12/01/1993
93–02–C–00–GPT, Gulfport-Biloxi Regional, Gulfport-Biloxi	11/02/1993	3	607,817	07/01/1992	12/01/1995
92–01–C–00–PIB, Hattiesburg-Laurel Regional, Hattiesburg-Laurel	04/15/1992	3	119,153	07/01/1992	01/01/1998
93–01–C–00–JAN, Jackson International, Jackson	02/10/1993	3	1,918,855	05/01/1993	04/01/1995
92–01–C–00–MEI, Key Field, Meridian	08/21/1992	3	122,500	11/01/1992	06/01/1994
93–02–C–00–MEI, Key Field, Meridian	10/19/1993	3	155,233	11/01/1992	08/01/1996
94–01–C–00–TUP, Tupelo Municipal—C.D. Lemons Field, Tupelo	08/03/1994	3	461,000	11/01/1994	10/01/1999
Missouri					
93–01–C–00–SGF, Springfield Regional, Springfield	08/30/1993	3	1,937,090	11/01/1993	10/01/1996
92–01–C–00–STL, Lambert-St. Louis International, St. Louis	09/30/1992	3	84,607,850	12/01/1992	03/01/1996
Montana					
93–01–C–00–BIL, Billings—Logan International, Billings	01/26/1994	3	5,672,136	04/01/1994	05/31/2002
93–01–C–00–BZN, Gallatin Field, Bozeman	05/17/1993	3	4,198,000	08/01/1993	06/01/2005
94–01–C–00–BTM, Bert Mooney, Butte	04/17/1994	3	410,202	07/01/1994	05/01/2000
92–01–C–00–GTF, Great Falls International, Great Falls	08/28/1992	3	3,010,900	11/01/1992	07/01/2002
93–02–U–00–GTF, Great Falls International, Great Falls	05/25/1993	3	0	101/01/1992	07/01/2002
92–01–C–00–HLN, Helena Regional, Helena	01/15/1993	3	1,056,190	04/01/1993	12/01/1999
93–01–C–00–FCA, Glacier Park International, Kalispell	9/29/1993	3	1,211,000	12/01/1993	11/01/1999
92–01–C–00–MSO, Missoula International, Missoula	06/12/1992	3	1,900,000	09/01/1992	08/01/1997
Nevada					
91–01–C–00–LAS, McCarran International, Las Vegas	02/24/1992	3	944,028,500	06/01/1992	02/01/2014
93–02–C–00–LAS, McCarran International, Las Vegas	06/07/1993	3	36,500,000	06/01/1992	09/01/2014
94–03–U–00–LAS, McCarran International, Las Vegas	04/20/1994	0	0	07/01/1994	09/01/2014
93–01–C–00–RNO, Reno Cannon International, Reno	10/29/1993	3	34,263,607	01/01/1994	05/01/1999
New Hampshire					
92–01–C–00–MHT, Manchester, Manchester	10/13/1992	3	5,461,000	01/01/1993	03/01/1997
New Jersey					
92–01–C–00–EWA, Newark International, Newark	07/23/1992	3	84,600,000	10/01/1992	08/01/1995
New York					
93–01–I–00–ALB, Albany County, Albany	12/03/1993	3	40,726,364	03/01/1994	04/01/2005
93–01–C–00–BGM, Binghamton Regional/Edwin A. Link FIE, Binghamton	08/18/1993	3	1,872,264	11/01/1993	11/01/1997
92–01–I–00–BUF, Greater Buffalo International, Buffalo	05/29/1992	3	189,873,000	08/01/1992	03/01/2026
94–01–C–00–ISP, Long Island MacArthur, Islip	09/23/1994	3	18,033,985	12/01/1994	12/31/2006
92–01–I–00–ITH, Tompkins County, Ithaca	09/28/1992	3	1,900,000	01/01/1993	01/01/1999
94–02–C–00–ITH, Tompkins County, Ithaca	09/06/1994	3	1,344,167	12/01/1994	01/01/2004
92–01–C–00–JHW, Chautauqua County/Jamestown, Jamestown	03/19/1993	3	434,822	06/01/1993	06/01/1996
92–01–C–00–JFK, John F. Kennedy International, New York	07/23/1992	3	109,980,000	10/01/1992	08/01/1995
92–01–C–00–LGA, Laguardia, New York	07/23/1992	3	87,420,000	10/01/1992	08/01/1995

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State; application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
93–01–C–00–PLB, Clinton County, Plattsburgh	04/30/1993	3	227,830	07/01/1993	01/01/1998
94–01–C–00–SLK, Adirondack, Saranac Lake	05/18/1994	3	121,952	08/01/1994	01/01/2003
92–01–C–00–HPN, Westchester County, White Plains	11/09/1992	3	27,883,000	02/01/1993	06/01/2022
North Carolina					
94–01–C–00–AVL, Asheville Regional, Asheville	09/19/1994	3	4,909,314	12/01/1994	11/01/2000
93–01–C–00–ILM, New Hanover International, Wilmington	11/02/1993	3	1,505,000	02/01/1994	08/01/1997
North Dakota					
92–01–C–00–GFK, Grand Forks International, Grand Forks	11/16/1992	3	1,016,509	02/01/1993	02/01/1997
93–01–C–00–MOT, Minot International, Minot	12/15/1993	3	1,569,483	03/01/1994	03/01/1999
Ohio					
92–01–C–00–CAK, Akron-Canton Regional, Akron	06/30/1992	3	3,594,000	09/01/1992	08/01/1996
92–01–C–00–CLE, Cleveland—Hopkins International, Cleveland	09/01/1992	3	34,000,000	11/01/1992	11/01/1995
94–02–U–00–CLE, Cleveland—Hopkins International, Cleveland	02/02/1994	3	0	05/01/1994	11/01/1995
92–01–I–00–CMH, Port Columbus International, Columbus	07/14/1992	3	7,341,707	10/01/1992	03/01/1994
93–02–I–00–CMH, Port Columbus International, Columbus	07/19/1993	3	16,270,256	02/01/1994	09/01/1996
93–03–U–00–CMH, Port Columbus International, Columbus	10/27/1993	3	0	10/01/1992	09/01/1996
94–02–C–00–DAY, James M. Cox Dayton International, Dayton	07/25/1994	3	23,467,251	10/01/1994	10/01/2001
93–01–C–00–TOL, Toledo Express, Toledo	06/29/1993	3	2,750,896	09/01/1993	09/01/1996
94–01–C–00–YNG, Youngstown—Warren Regional, Youngstown	02/22/1994	3	351,180	05/01/1994	07/01/1996
Oklahoma					
92–01–C–00–LAW, Lawton Municipal, Lawton	05/08/1992	3	482,135	08/01/1992	04/01/1996
92–01–I–00–TUL, Tulsa International, Tulsa	05/11/1992	3	9,717,000	08/01/1992	08/01/1995
93–02–U–00–TUL, Tulsa International, Tulsa	10/18/1993	3	0	02/01/1994	08/01/1995
Oregon					
93–01–C–00–EUG, Mahlon Sweet Field, Eugene	08/31/1993	3	3,729,699	11/01/1993	11/01/1998
93–01–C–00–MFR, Medford—Jackson County, Medford	04/21/1993	3	1,066,142	07/01/1993	11/01/1995
93–01–C–00–OTH, North Bend Municipal, North Bend	11/24/1993	3	182,044	02/01/1994	01/01/1998
92–01–C–00–PDX, Portland International, Portland	04/08/1992	3	17,961,850	07/01/1992	07/01/1994
94–02–C–00–PDX, Portland International, Portland	07/12/1994	3	53,653,440	11/01/1994	09/01/1999
93–01–C–00–RDM, Roberts Field, Redmond	07/02/1993	3	1,191,552	10/01/1993	03/01/2000
Pennsylvania					
92–01–I–00–ABE, Allentown-Bethlehem-Easton, Allentown	08/28/1992	3	3,778,111	11/01/1992	04/01/1995
92–01–C–00–ADO, Altoona—Belair County, Altonna	02/03/1993	3	198,000	05/01/1993	02/01/1996
94–01–C–00–DUJ, DU Bois—Jefferson County, Du Bois	09/29/1994	3	292,195	12/01/1994	07/01/1997
92–01–C–00–ERI, Erie International, Erie	07/21/1992	3	1,997,885	10/01/1992	06/01/1997
93–01–C–00–JST, Johnstown—Cambria County, Johnstown	08/31/1993	3	307,500	11/01/1993	02/01/1998
94–01–C–00–LNS, Lancaster, Lancaster	11/09/1994	3	1,750,800	02/01/1995	02/01/2015
92–01–1–00–PHL, Philadelphia International, Philadelphia	06/29/1992	3	76,169,000	09/01/1992	07/01/1995
93–02–U–00–PHL, Philadelphia International, Philadelphia	05/14/1993	3	0	08/01/1993	07/01/1995
94–01–C–00–RDG, Reading Regional/Carl A. Spaatz Field, Reading	09/16/1994	3	600,750	12/01/1994	08/01/1998
92–01–C–00–UNV, University Park, State College	08/28/1992	3	1,495,974	11/01/1992	07/01/1997
93–01–C–00–AVP, Wilkes-Barre/Scranton International, Wilkes-Barre/ Scranton	09/24/1993	3	2,369,566	12/01/1993	06/01/1997
Rhode Island					
93–01–C–00–PVD, Theodore F. Green State, Providence	11/30/1993	3	103,885,286	02/01/1994	08/01/2013
South Carolina					
93–01–C–00–CAE, Columbia Metropolitan, Columbia	08/23/1993	3	32,969,942	11/01/1993	09/01/2008
93–01–C–00–49J, Hilton Head, Hilton Head Island	11/19/1993	3	1,542,300	02/01/1994	03/01/1999
Tennessee					
93–01–C–00–CHA, Lovell Field, Chattanooga	04/26/1994	3	7,177,253	07/01/1994	10/01/2002
93–01–C–00–TYS, McGhee Tyson, Knoxville	10/06/1993	3	5,681,615	01/01/1994	01/01/1997
92–01–I–00–MEM, Memphis International, Memphis	05/28/1992	3	26,000,000	08/01/1992	12/01/1994
93–02–C–00–MEM, Memphis International, Memphis	01/14/1994	3	24,026,000	04/01/1994	10/01/1999
92–01–C–00–BNA, Nashville International, Nashville	10/09/1992	3	143,358,000	01/01/1993	02/01/2004
Texas					
93–02–C–00–AUS, Robert Mueller Municipal, Austin	06/04/1993	3	6,181,800	11/01/1993	01/01/1995
94–01–C–00–BPT, Jefferson County, Beaumont/Port Arthur	06/03/1994	3	563,126	09/01/1994	11/01/1996
93–01–C–00–CRP, Corpus Christi International, Corpus Christi	12/29/1993	3	5,540,745	03/01/1994	01/01/1998
94–01–C–00–DFW, Dallas/Forth Worth International, Dallas/Fort Worth	02/17/1994	3	115,000,000	07/01/1994	02/01/1996
92–01–C–00–ILE, Killeen Municipal, Killeen	10/201992	3	243,339	01/01/1993	11/01/1994
93–01–I–00–LRD, Laredo International, Laredo	07/23/1993	3	11,983,000	10/01/1993	09/01/2013
93–01–C–00–LBB, Lubbock International, Lubbock	07/09/1993	3	10,699,749	10/01/1993	02/01/2000
94–02–U–00–LBB, Lubbock International, Lubbock	02/15/1994	3	0	05/01/1994	02/01/2000
92–01–I–00–MAF, Midland International, Midland	10/16/1992	3	35,529,521	01/01/1993	01/01/2013

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State; application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
94–02–U–00–MAF, Midland International, Midland	04/14/1994	3	0	07/01/1994	01/01/2013
93–01–C–00–SJT, Mathis Field, San Angelo	02/24/1993	3	873,716	05/01/1993	11/01/1998
93–01–C–00–TYR, Tyler Pounds Field, Tyler	12/20/1993	3	819,733	03/01/199	07/01/1998
94–01–C–00–VCT, Victoria Regional, Victoria	08/25/1994	3	195,960	12/01/1994	10/01/1997
Utah					
94–01–C–00–SLC, Salt Lake City International, Salt Lake City	10/01/1994	3	65,177,790	12/01/1994	05/01/1998
Virginia					
92–01–I–00–CHO, Charlottesville-Albemarle, Charolttesville	06/11/1992	2	255,559	09/01/1992	11/01/1993
92–02–U–00–CHO, Charlottesville-Albemarle, Charlottesville	12/21/1992	2	0	09/01/1992	11/01/1993
93–03–U–00–CHO, Charlottesville-Albemarle, Charlottesville	10/20/1993	2	0	01/01/1994	11/01/1993
94–04–C–00–CHO, Charlottesville-Albemarle, Charlottesville	10/12/1993	2	117,914	01/01/1995	11/01/1993
94–01–C–00–RIC, Richmond International (Byrd Field), Richmond	02/04/1994	3	30,976,072	05/01/1994	08/01/2005
93–01–C–00–IAD, Washington Dulles International, Washington, DC	10/18/1993	3	199,752,390	01/01/1994	11/01/2003
93–01–C–00–DCA, Washington National, Washington, DC	08/16/1993	3	166,739,071	11/01/1993	11/01/2000
94–01–U–00–DCA, Washington National, Washington, DC	04/06/1994	3	0	07/01/1994	11/01/2000
Washington					
93–01–C–00–BLI, Bellingham International, Bellingham	04/29/1993	3	366,000	07/01/1993	01/01/1995
94–02–C–00–BLI, Bellingham International, Bellingham	10/05/1994	3	732,000	01/01/1995	01/01/1997
93–01–C–00–PSC, Tri-Cities, Pasco	08/03/1993	3	1,230,731	11/01/1993	11/01/1996
93–01–C–00–CLM, William R Fairchild International, Port Angeles	05/24/1993	3	52,000	08/01/1993	08/01/1994
94–01–C–00–PUW, Pullman-Moscow Regional, Pullman	03/22/1994	1	169,288	06/01/1994	01/01/1998
92–01–C–00–SEA, Seattle-Tacoma International, Seattle	08/13/1992	3	28,847,488	11/01/1992	01/01/1994
93–02–C–00–SEA, Seattle-Tacoma International Seattle	10/25/1993	3	47,500,500	01/01/1994	01/01/1996
93–01–C–00–GEG, Spokane International, Spokane	03/23/1993	3	15,272,000	06/01/1993	12/01/1999
93–01–I–00–ALW, Walla Walla Regional, Walla Walla	08/03/1993	3	1,187,280	11/01/1993	11/01/2014
93–01–C–00–EAT, Pangborn Field, Wenatchee	05/26/1993	3	280,500	08/01/1993	10/01/1995
92–01–C–00–YKM, Yakima Air Terminal, Yakima	11/10/1992	3	416,256	02/01/1993	04/01/1995
94–02–C–00–YKM, Yakima Air Terminal, Yakima	09/22/1994	3	14,745	04/01/1995	06/01/1995
West Virginia					
93–01–C–00–CRW, Yeager, Charleston	05/28/1993	3	3,254,126	08/01/1993	04/01/1998
93–01–C–00–CKB, Benedum, Clarksburg	12/29/1993	3	105,256	04/01/1994	04/01/1996
92–01–C–00–MGW, Morgantown Muni-Walter L. Bill Hart, Morgantown	09/03/1992	3	55,500	12/01/1992	01/01/1994
94–02–C–00–MGW, Morgantown Muni-Walter L. Bill Hart, Morgantown	09/16/1994	2	222,500	12/01/1994	12/01/1999
Wisconsin					
94–01–C–00–ATW, Outagamie County, Appleton	04/25/1994	3	3,233,645	07/01/1994	09/01/2000
92–01–C–00–GRB, Austin Straubel International, Green Bay	12/28/1992	3	8,140,000	03/01/1993	03/01/2003
94–01–C–00–LSE, La Crosse Municipal, La Crosse	04/06/1994	3	795,299	08/01/1994	08/01/1997
93–01–C–00–MSN, Dane County Regional—Truax Field, Madison	06/22/1993	3	6,746,000	09/01/1993	03/01/1998
93–01–C–00–CWA, Central Wisconsin, Mosinee	08/10/1993	3	7,725,600	11/01/1993	11/01/2012
93–01–C–00–RHI, Rhinelander—Oneida County, Rhinelander	08/04/1993	3	167,201	11/01/1993	04/01/1996
Wyoming					
93–01–C–00–CPR, Natrona County International, Casper	06/14/1993	3	506,144	09/01/1993	10/01/1996
93–01–C–00–CYS, Cheyenne, Cheyenne	07/30/1993	3	742,261	11/01/1993	08/01/2000
93–01–I–00–GCC, Gillette—Campbell County, Gillette	06/28/1993	3	331,540	09/01/1993	09/01/1999
93–01–C–00–Jac, Jackson Hole, Jackson	05/25/1993	3	1,081,183	08/01/1993	02/01/1996
Guam					
92–01–C–00–NGM, Agana Nas, Agana	11/10/1992	3	5,632,000	02/01/1993	06/01/1994
93–02–C–00–NGM, Agana Nas, Agana	02/25/1994	3	258,408,107	05/01/1994	06/01/2021
Puerto Rico					
92–01–C–00–BQN, Rafael Hernandez, Aguadilla	12/29/1992	3	1,053,000	03/01/1993	01/01/1999
92–01–C–00–PSE, Mercedita, Ponce	12/29/1992	3	866,000	03/01/1993	01/01/1999
92–91–C–00–SJU, Luis Munoz Marin International, San Juan	12/29/1992	3	49,768,000	03/01/1993	02/01/1997
93–02–U–00–SJU, Luis Munoz Marin Internationa, San Juan	12/14/1993	3	0	03/01/1994	02/01/1997
Virgin Islands					
92–01–I–00–STT, Cyril E. King, Charlotte Amalie	12/08/1992	3	3,871,005	03/01/1993	02/01/1995
92–01–I–00–STX, Alexander Hamilton, Christiansted St. Croix	12/08/1992	3	2,280,465	03/01/1993	05/01/1995
94–02–U–00–STX, Alexander Hamilton, Christiansted St. Croix	11/28/1994	3	0	02/01/1995	05/01/1995

*The estimated charge expiration date is subject to change due to the rate of collection and actual allowable project costs.

[FR Doc. 95–1265 Filed 1/18–95; 8:45 am]
BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Blue Earth, Steele and Waseca Counties, Minnesota

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement is being prepared as part of the U.S. 14 Corridor Study for a transportation improvement project in Blue Earth, Steele and Wasceca Counties, Minnesota.

FOR FURTHER INFORMATION CONTACT: Mr. James McCarthy, Design Engineer, U.S. Department of Transportation, Federal Highway Administration, Suite 490 Metro Square Building, Saint Paul, Minnesota 55101, telephone number (612) 290–3241. Mr. Curt Fakler, Project Manager, Minnesota Department of Transportation, District 7, 501 South Victory Drive, P.O. Box 4039, Mankato, Minnesota 56001–4039, telephone number (507) 389–6011.

SUPPLEMENTARY INFORMATION: The proposed project is identified as State Project (SP) 8837–81003 and involves improvements to the existing two-lane roadway in Blue Earth, Steele and Waseca Counties. The corridor limits are on U.S. 14 from the east junction of the T.H. 60 to I–35 in Owatonna. The total length of the corridor study is 50 Kilometers. The proposed improvements are considered necessary to meet current and projected traffic volumes on the U.S. 14 Corridor. Build alternatives being considered include reconstruction along the present U.S. 14 with the upgraded 2-Lane roadway, divided 4-Lane reconstruction of the U.S. 14 with bypasses of the Cities of Janesville and Waseca, and a new 4-Lane alignment between Waseca and Owatonna approximately four kilometers south of the present U.S. 14.

The Minnesota Department of Transportation held a Public Scoping Meeting on May 20, 1993, and a Public Information Meeting on August 5, 1993. The Scoping Document/Draft Scoping Decision (April 1993) and Scoping Decision (March 1994) documents have been sent to Federal, State and local agencies that may have an interest in the project to inform them of the proposed project and scoping meeting, to solicit their comments and concerns, and to inform them of the alternatives being considered in the Environmental Impact Statement. During the initial scoping process three alternate new alignments for U.S. 14 were eliminated due to impacts or inadequate performance. The Draft Environmental Impact Statement is expected to be available for review in the Spring of 1995.

Issued on: January 6, 1995.

James A. Cheattham,

Acting Division Administrator, St. Paul, Minnesota.

[FR Doc. 95–1228 Filed 1–18–95; 8:45 am]
BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. 94–101; Notice 2]

Decision that Nonconforming 1991 Toyota Land Cruiser Multi-Purpose Passenger Vehicles are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1991 Toyota Land Cruiser multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1991 Toyota Land Cruiser MPVs not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to be vehicle originally manufactured for importation into and sale in the United States and certified by it manufacturer as complying with the safety standards (the U.S.-certified version of the 1991 Toyota Land Cruiser), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective January 19, 1995.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. They agency then publishes this decision in the Federal Register.

Champagne Imports, Inc. of Lansdale, Pennsylvania (Registered Importer R–90–009) petitioned NHTSA to decide whether 1991 Toyota Land Cruiser MPVs are eligible for importation into the United States. NHTSA published notice of the petition on November 21, 1994 (59 FR 60043) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number of Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 102 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1991 Toyota Land Cruiser not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1991 Toyota Land Cruiser originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Issued on: January 12, 1995.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 95–1267 Filed 1–18–95; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–91; Notice 2]

Decision That Nonconforming 1989 Toyota Land Cruiser Multi-Purpose Passenger Vehicles are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1989 Toyota Land Cruiser Multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1989 Toyota Land Cruiser MPVs not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1989 Toyota Land Cruiser), and they are capable of being readily altered to conform to the standards.

DATE: This decision is effective January 19, 1995.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

Champagne Imports, Inc. of Lansdale, Pennsylvania (Registered Importer R–90–009) petitioned NHTSA to decide whether 1989 Toyota Land Cruiser MPVs are eligible for importation into the United States. NHTSA published notice of the petition on November 21, 1994 (59 FR 60040) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 101 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1989 Toyota Land Cruiser not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1989 Toyota Land Cruiser originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 12, 1995.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 95–1266 Filed 1–18–95; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

[Treasury Directive 12–32]

Delegation of Authority Concerning Personnel Security

Dated: January 10, 1995.

1. *Delegation.* The Director, Office of Security, serves as principal adviser to the Assistant Secretary (Management) for carrying out the Department's personnel security program pursuant to Executive Order (E.O.) 10450, and is delegated the authority and responsibility for the functions pertaining to personnel security throughout the Department, except for any matter in which, by law or regulation of outside agencies, the personal decision of the head of the agency is required.

2. *Redelegation.*

a. The Director, Office of Security, shall redelegate to bureaus heads and the Inspector General the authority for performing the operating functions relating to personnel security, including (except as stated in paragraph 4(e)) the designation of position sensitivity and granting of security clearances.

b. Any authority so delegated to a bureau head or the Inspector General may be further redelegated, with the concurrence of the Director, Office of Security, within bureau headquarters and the Office of Inspector General.

c. The Assistant Director (Personnel Security), Office of Security, shall perform the operating functions relating to personnel security for the Departmental Offices.

3. *Responsibilities.* The Director, Office of Security shall:

a. define the operating functions and responsibilities relating to personnel security and prescribe uniform policies and general procedures in Treasury Department Publication (TD P) 71–10, ''Department of the Treasury Security Manual;''

b. represent the Department on all interagency committees and perform liaison functions with Federal agencies and the White House concerning personnel security matters;

c. represent the Department in Intelligence Community activities reporting through and OPI: Office of Security when so designated by the Special Assistant to the Secretary (National Security);

d. provide liaison between the Department of the Treasury and the Department of Energy on all matters pertaining to security clearances for access to information designated ''Restricted Data'' or ''Formerly Restricted Data'' pursuant to the Atomic Energy Act of 1954; and

e. provide guidance, coordinate, and document security clearances granted through the National Industrial Security Program pursuant to E.O. 12829 to contractors, subcontractors, vendors, and suppliers to the Department requiring access to classified information or material.

4. *Reserved Functions.* The following functions are reserved to the Director, Office of Security, and may not be redelegated.

a. Receiving all reports of investigations involving loyalty matters on Department of the Treasury employees and potential employees, and directing such matters to appropriate authorities for processing or resolution.

b. Assuming jurisdiction for all cases within the Department involving a potential determination that an employee should be suspended, reassigned, or terminated on the grounds that such action is necessary in the interests of the national security pursuant to 5 U.S.C. 7532.

c. Taking action to deny or revoke a security clearance on an employee or potential employee, and recommending action under 5 U.S.C. 7532 and E.O. 10450.

d. Making disclosure determinations concerning loyalty information contained in personnel security files pursuant to the Freedom of Information Act or the Privacy Act (5 U.S.C. 552 and 552a).

e. Designating position sensitivity for, maintaining security files on, and receiving and processing requests for security clearances pursuant to E.O. 12356 or successor orders concerning the following:

(1) presidential appointees requiring confirmation by the Senate, and the Inspector General, to the extent of the Department's authority with respect to these officials;

(2) heads of bureaus and their first deputies; and

(3) bureau security officers and any official to whom the authority to grant security clearances has been delegated.

5. *Authorities.*

a. E.O. 10450, ''Security Requirements for Government Employees,'' dated April 27, 1953, as amended.

b. E.O. 12829, ''National Industrial Security Program,'' dated January 6, 1993, as amended.

c. E.O. 12356, ''National Security Information,'' dated April 2, 1982.

d. 5 U.S.C. 7532.

e. Treasury Order (TO) 101–05, ''Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury.''

f. TO 102–01, ''Delegation of Authority Concerning Personnel Management.''

6. *References.*

a. TD P 71–10, ''Department of the Treasury Security Manual.''

b. The Atomic Energy Act of 1954, as amended.

c. The Freedom of Information Act and the Privacy Act (5 U.S.C. 552 and 552a).

d. TO 113–01, ''Agreements and Arrangements with Intelligence Community Agencies, and Other Responsibilities of the Special Assistant to the Secretary (National Security).''

7. *Cancellations.* The following Treasury Directives (TD) are superseded.

a. TD 12–32, ''Delegation of Authority Concerning Personnel Security,'' dated January 29, 1987.

b. TD 12–33, ''Restricted and Formerly Restricted Data,'' dated January 29, 1987.

8. *Expiration Date.* This Directive expires three years after the date of issuance unless cancelled or superseded by that date.

9. *Office of Primary Interest.* Office of Security, Office of the Assistant Secretary (Management)/Chief Financial Officer.

George Muñoz,

Assistant Secretary (Management)/Chief Financial Officer.

[FR Doc. 95–1314 Filed 1–18–95; 8:45 am]

BILLING CODE 4810–25–P

Customs Service

[T.D. 94–8]

License Cancellation

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 111.51(a), the following Customs broker license has been cancelled due to the death of the broker. This license was issued in the New York district.

Roland Angel—license no. 4325.

Dated: January 12, 1995.

Philip Metzger,

Director, Office of Trade Operations.

[FR Doc. 95–1312 Filed 1–18–95; 8:45 am]

BILLING CODE 4820–02–M

[T.D. 95–9]

Delegation Order Relating to Test of Customs Management Center Concept

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Delegation Order.

SUMMARY: This document provides notice that the Commissioner of Customs has delegated expanded authority to the Port Directors and Fines, Penalties, and Forfeiture Officers in the Districts of San Diego, New Orleans, and Mobile with regards to their day-to-day operations in order to facilitate prototype testing of Customs Management Center (''CMC'') concept. In addition, certain authority of the Regional Commissioners for the Pacific and South Central Regions to respond to supplemental petitions is delegated to the Fines, Penalties, and Forfeitures Regional Coordinators in the Southwest and Southeast Regions. The Delegation Order does not eliminate the offices of District Director or Regional Commissioner and it does not affect the processing of merchandise.

EFFECTIVE DATE: The delegations are effective as of January 16, 1995.

FOR FURTHER INFORMATION CONTACT: Dennis Dore, Office of Field Operations, 202–927–6871.

Dated: January 13, 1995.

George J. Weise,

Commissioner of Customs.

SUPPLEMENTARY INFORMATION: On January 13, 1995, the Commissioner of Customs approved the following delegation of authority:

Pursuant to Reorganization Plan No. 1 of 1965, (30 FR 7035), Reorganization Plan No. 26 of 1950 (3 CFR Ch III), section 1 of the Act of August 1, 1914, as amended 38 Stat. 623 (19 USC § 2), Executive Order No. 10289, September 17, 1951 (3 CFR Ch II), and the authority delegated to me by Treasury Department Order 165, Revised (T,D, 53654, 19 F.R. 7241), as amended, for the period beginning on January 16, 1995 and ending on September 30, 1995, it is hereby ordered that:

Sec. 1 SUBJECT to the following exceptions, in addition to the district director, any Port Director in the Customs Districts of San Diego, California, New Orleans, Louisiana, and Mobile, Alabama is authorized to perform all functions required by the Customs Regulations to be performed by the District Director. This delegation only affects areas and ports within the Customs Districts of New Orleans, Louisiana; Mobile, Alabama; and San Diego, California.

Note 1: Where the Fines, Penalties, and Forfeitures Officer of New Orleans, Louisiana is mentioned, that individual may perform the function(s) specified for the ports of New Orleans, LA; Baton Rouge, LA; Chattanooga, TN; Gramercy, LA; Greenville, MS;

Knoxville, TN; Lake Charles, LA; Little Rock-North Little Rock, AR; Memphis, TN; Memphis, TN; Morgan City, LA; Nashville, TN; Shreveport-Bossier City, LA; and Vicksburg, MS.

Note 2: Where the Fines, Penalties, and Forfeitures Officer of Mobile, Alabama is mentioned, that individual may perform the function(s) specified for the ports of Mobile, AL; Birmingham, AL; Gulfport, MS; Huntsville, AL; and Pascagoula, MS.

Note 3: Where the Fines, Penalties, and Forfeitures Officer of San Diego, California is mentioned, that individual may perform the function(s) specified for the ports of San Diego, CA; Andrade, CA; Calexico, CA; and Tecate, CA.

1. *Part 10—Articles Conditionally Free, Subject to Reduced Rate, etc.*—In addition to the district directors, the following decisions and/or actions required by Part 10 of the Customs Regulations to be made or taken by the district director may be made or taken only by the Port Directors of Calexico and Tecate:

A. §§ 10.31, 10.37, and 10.39—Issues relating to Temporary Importation Bonds (TIB).

B. § 10.183—Issues relating to Blanket certification in each district for importation of civil aircraft parts.

2. *Part 12—Special Classes of Merchandise*—Except as noted, in addition to the district directors, the following decisions and/or actions required by Part 12 of the Customs Regulations to be made or taken by the district director may be made or taken only by the Port Directors in Calexico and Tecate:

A. § 12.8—Settle liquidated damage claims up to $20,000 for inspection of meat. Except that authority for settlement of liquidated damage claims up to $20,000 in the districts of New Orleans and Mobile may also be taken by the Fines, Penalties, and Forfeiture Officers in those districts.

B. § 12.39—Assess liquidated damages for unfair competition.

C. § 12.42—Receive allegations of importations produced under conditions of forced labor

D. § 12.45—Report to the United States Attorney regarding prison-labor products.

E. § 12.73—Release a vehicle under bond.

F. § 12.80—Release a vehicle under bond.

G. § 12.85—Release a boat under bond.

H. § 12.91—Release electronic products under bond.

I. § 12.104c—Make decisions concerning satisfactory evidence for importation of cultural property.

J. § 12.107—Make decisions concerning satisfactory evidence for importation of Pre-Columbian Art.

K. § 12.116, 117—Make decisions concerning release of pesticides and devices under bond—sampling.

L. § 12.122—Make decisions concerning grounds to believe that a shipment is not in compliance with the Toxic Substances Control Act.

M. §§ 12.130 and 12.132—Make textile country of origin determinations.

3. *Part 18—Transportation in Bond and Merchandise in Transit*—§ 18.8—In addition to the district directors, cancellation of liquidated damages up to $100,000 may only be performed by the Fines, Penalties, and Forfeiture Officers in New Orleans and Mobile and the Port Directors in Calexico and Tecate.

4. *Part 24—Customs Financial and Accounting Procedure*—Determination of approval on a district-wide basis for deferred payment of estimated taxes for alcoholic beverages under § 24.4 is not delegated under this order.

5. *Part 111—Customs Brokers*—The following decisions and/or actions required by Part 111 of the Customs Regulations to be made or taken by the district director are not delegated under this order:

A. § 111.22—Authority to grant exemptions from certain record keeping requirements.

B § 111.54—Authority to act as the ''appropriate officer of the Customs'' within the scope of 19 U.S.C. 1641(d)(2).

C § 111.59—Serve the broker with notice that Customs intends to take disciplinary action against the broker.

D. § 111.60-end—Participate in disciplinary proceedings against a broker.

E. Actions under Appendix C to Part 171 of the Customs Regulations.

6. *Part 112—Carriers, Cartmen, and Lightermen*—In addition to the district directors, the following decisions and/or actions required by Part 112 of the Customs Regulations to be made or taken by the district director may be made or taken only by the Port Director in Calexico:

A. §§ 112.11–14—Issuance of authorizations and bonds for carriers between ports.

B. §§ 112.21–25—Issue a district—wide license for cartmen and lightermen. Issue of cartmen and lighterman bond.

C. § 112.30—Revoke or suspend the license of a cartman or lighterman.

D. § 112.48—Revoke or suspend the identification card for an employee of a cartman or lighterman.

7. *Part 113—Customs Bonds*—In addition to the district directors, only the Port Director in Calexico may make or take the following decisions and/or actions required by Part 113 of the Customs Regulations to be made or taken by the district director:

A. § 113.11—For transactions which affect the District of San Diego, the bond may be approved, filed, and maintained for that district by the Port Director in Calexico. For transactions which affect more than one Customs district, the bond may be filed in any district or with the Port Director in Calexico.

B. § 113.13—Periodically review each bond filed in the port.

C. § 113.15—Bonds filed with the Port Director in Calexico will remain on file in the offices of that port.

D. § 113.27—Receive notice from the surety of termination of the bonds filed within the Port of Calexico.

E. § 113.38—Refuse to accept a bond from a significantly delinquent surety operating in the Port of Calexico.

F. § 113.39—Take the initial steps to remove a surety's Certificate of Authority under Treasury Department Circular 570.

8. *Part 114—Carnets*—§ 114.34—In addition to the district directors, only the Port Directors in Calexico and Tecate and the Fines, Penalties, and Forfeiture Officers in New Orleans and Mobile are authorized to cancel certain liquidated damages against a TIR or ATA Carnet.

9. *Part 123—Customs Relations with Canada and Mexico*—§ 123.9—In addition to the district directors, only the Port Directors in Calexico and Tecate may make the decisions regarding the manifest discrepancy report.

10. *Part 125—Cartage and Lighterage of Merchandise*—§ 125.72—In addition to the district directors, only the Port Directors in Calexico and Tecate or the Fines, Penalties, and Forfeiture Officers in New Orleans and Mobile may cancel liability for liquidated damage claims against the bond of a cartman or lighterman, up to $100,000.

11. *Part 128—Express Consignments*—§ 128.11–12—Authority to act on applications for an express consignment carrier or a hub facility is not delegated under this order.

12. *Part 132 Quotas*—§ 132.14—In addition to the district directors, only the Port Directors in Calexico and Tecate may assess claims for liquidated damages under the importer's bond for quota violations. In addition to the district directors, only the Port Directors in Calexico or Tecate and the Fines, Penalties, and Forfeiture Officers in New Orleans and Mobile may cancel claims for liquidated damages under the importer's bond for quota violations.

13. *Part 134—Country of Origin Marking*—In addition to the district directors, the following decisions and/or actions required by Part 134 of the Customs Regulations to be made or taken by the district director may be made or taken only by the Customs officers specified:

A. § 134.34—Granting extensions of the date for liquidation of entries subject to repacking may only be made by the Port Directors in Calexico and Tecate.

B. § 134.54—Assessment of liquidated damages for marking or attendant redelivery violations may only be made by the Port Directors in Calexico and Tecate. Mitigation of liquidated damages for marking or attendant redelivery violations may be made by the Port Directors in Calexico and Tecate and the Fines, Penalties, and Forfeiture Officers in New Orleans and Mobile.

14. *Part 141—Entry of Merchandise*—In addition to the district directors, the following issues and/or actions required by Part 141 of the Customs Regulations to be made or taken by the district director may be made or taken only by the Customs officers specified:

A. § 141.15—Acceptance of a bond for production of a bill of lading may also be made by the Port Directors in Calexico and Tecate.

B. § 141.90—Approval of the entered tariff classification, rate of duty, value, and estimated duties may also be made by the Port Director in Calexico. (Also see § 141.103.)

15. *Part 142—Entry Process*—Except as noted, in addition to the district directors, the following decisions and/or actions required by Part 142 of the Customs Regulations to be made or taken by the

district director may be made or taken only by the Port Directors in Calexico and Tecate:

A. § 142.4—Determination for waiver of surety or cash deposit at time of entry.

B. § 142.13—Special authority to require that entry summary documentation and estimated duties be deposited prior to release of the merchandise.

C. § 142.15—Assessment of liquidated damages for failure to file timely entry summary. In addition, such decisions may also be made by any port director in the districts of New Orleans and Mobile.

D. § 142.17a—Authority to permit one consolidated entry summary by a broker for multiple consignees.

E. § 142.21—Discretion to release certain merchandise under a special permit for ID in accordance with 19 U.S.C. § 1448.

F. § 142.27—Authority to make demand for liquidated damages where the documentation requirements of this part are not met.

16. *Part 143—Special Entry Procedures*—§ 143.11—In addition to the district directors, only the Port Directors in Calexico and Tecate may approve certain merchandise for appraisement entry without the commissioner's approval.

17. *Part 146—Foreign Trade Zones*—The following decisions and/or actions required by Part 146 of the Customs Regulations to be made or taken by the district director are not delegated under this order:

A. Throughout this part—Exercise the approval required of the district director.

B. § 146.2—Be in charge of a foreign trade zone as the representative of the FTZ Board.

C. § 146.6—Receive and act upon a request to activate a zone or a zone site.

D. § 146.7—Approve or disapprove zone changes.

E. § 146.81—Assess fines for violation of the FTZ laws and regulations by a grantee, officer, agent, operator, or employee of the zone.

F. § 146.82—Suspend for cause the activated status of a zone or zone site of a lesser privilege granted to the zone or zone site under the regulations.

G. § 146.83—Recommend to the FTZ Board that the privilege of establishing, operating, and maintaining a zone or subzone be revoked for willful and repeated violations of the Act.

18. *Part 151—Examination, Sampling, and Testing of Merchandise*—Note that authority to approve certain non-emergency operations still requires the written approval of Commissioner of Customs as well as that of the port director.

19. *Part 152—Classification and Appraisement of Merchandise*—§§ 152.103, 152.105, 152.105, and 152.106—Authority to make valuation decisions is not delegated by this order.

20. *Part 158—Relief from Duties on Merchandise Lost, Damaged, Abandoned, or Exported*—In addition to the district directors, allowances for lost, damaged, abandoned, or exported merchandise required to be shown to the satisfaction of and approved by the district director may also be shown to the satisfaction of only the Port Director in Calexico.

21. *Part 159—Liquidation of Duties*—In addition to the district directors, the following decisions and/or actions required by Part 159 of the Customs Regulations to be made or taken by the district director may be made or taken only by the Port Director in Calexico:

A. § 159.12—Authority to extend the one year statutory period for liquidation of an entry.

B. § 159.44—Where it appears that articles may be subject to the special duties provided for in 15 U.S.C. § 73 (regarding restraint of trade) the specified port director shall report the matter to the Commissioner of Customs and await instructions.

C. § 159.58—Suspend liquidation on merchandise which may be subject to antidumping or countervailing duties.

22. *Part 161—General Enforcement Provisions*—§ 161.16—In addition to the district directors, any port director in the district of San Diego and the Special Agent in Charge, New Orleans are the only parties who may make a recommendation on an informant's 19 U.S.C. § 1619 claim to Headquarters.

23. *Part 162—Recordkeeping, Inspection, Search and Seizure*—Except as noted, the following decisions and/or actions required by Part 162 of the Customs Regulations to be made or taken by the district director, are not delegated under this order:

A. § 162.1d—Issuance of a summons for examination of records and witnesses.

B. § 162.44—Only the port directors in the district of San Diego and the Fines, Penalties, and Forfeitures Officers in New Orleans and Mobile are authorized to accept a written offer to pay the appraised domestic value of property seized and to release the property to the owner. 19 U.S.C. § 1614.

C. § 162.47—The port directors in the district of San Diego and the Fines, Penalties, and Forfeitures Officers in New Orleans and Mobile may, upon satisfactory proof of financial inability, waive the bond requirement for any person claiming an interest in seized property.

D. § 162.74—Authority to make determinations with regard to ''prior disclosure'' cases.

24. *Part 171—Fines, Penalties, and Forfeitures*—In addition to the district directors, the following decisions and/or actions required by Part 171 of the Customs Regulations to be made or taken by the district director may be made or taken only by the officers noted below:

A. § 171.21—Mitigation or remission of fines, penalties, and forfeitures up to the designated limits of this section may be made by any port director in the District of San Diego or by the Fines, Penalties, and Forfeitures Officers in New Orleans and Mobile.

B. § 171.22—The ''special classes of cases'' specified in this section may be acted upon by any port director in the District of San Diego and by the Fines, Penalties, and Forfeitures Officers in New Orleans and Mobile.

§ 171.33—Note that in section 2 to this delegation order, decisions on supplemental petitions under this section for matters arising in the District of San Diego will be made by the Fines, Penalties, and Forfeitures Regional Coordinator for the Southwest Region. Decisions on supplemental petitions under this section for matters arising in the South Central Region will be made by the Fines, Penalties, and Forfeitures Regional Coordinator for the Southeast Region.

25. *Part 172—Liquidated Damages*—In addition to the district directors, the following decisions and/or actions required by Part 171 of the Customs Regulations to be made or taken by the district director may be made or taken only by the officers noted below:

A. § 172.21—Cancellation of a claim for liquidated damages incurred when the claim is $100,000, or less may be done by any port director in the District of San Diego and by the Fines, Penalties, and Forfeitures Officers in New Orleans and Mobile.

§ 172.22—The additional ''special cases'' specified in this section which may be acted upon by the district director may be acted upon by any port director in the District of San Diego and by the Fines, Penalties, and Forfeitures Officers in New Orleans and Mobile.

C. § 172.31—Cancellation of a claim for liquidated damages, when it is definitely determined that the act or omission forming the basis for the claim did not occur, may be performed by any port director in the District of San Diego and by the Fines, Penalties, and Forfeitures Officers in New Orleans and Mobile.

§ 172.33—Note that in section 2 to this delegation order, decisions on supplemental petitions under this section for matters arising in the District of San Diego will be made by the Fines, Penalties, and Forfeitures Regional Coordinator for the Southwest Region. Decisions on supplemental petitions under this section for matters arising in the South Central Region will be made by the Fines, Penalties, and Forfeitures Regional Coordinator for the Southeast Region.

26. *Part 174—Protests*—In addition to the district directors, the following decisions and/or actions required by Part 174 of the Customs Regulations to be made or taken by the district director may be made or taken only by the Port Directors in Calexico and Tecate:

A. § 174.11—''Matters subject to protest'' include decisions of the Port Directors in Calexico and Tecate. Protests may continue to be filed with any port director.

B. § 174.22—Review of accelerated protests.

Note: Under § 174.24, one of the criteria for ''further review'' of a protest is an inconsistent decision in any district with respect to the same or substantially similar merchandise. That criteria is extended to an inconsistent decision by the Port Directors in Calexico and Tecate as though those individuals were district directors.

27. *Part 176—Proceedings in the Court of International Trade*—§ 176.1—Notice of the protest is served upon the district or port director making the decision protested.

28. *Part 191—Drawback*—In addition to the district directors, the following decisions and/or actions required by Part 191 of the Customs Regulations to be made or taken by the district director may be made or taken only by the Port Directors in Calexico and Tecate:

A. § 191.53—Exporter's summary is a drawback procedure for which permission is not being delegated by this order.

B. § 191.62—Drawback claims may be filed only with the specified port directors.

C. § 191.136—When a bill of lading is required for completion of a claim that merchandise was exported from continuous Customs custody, only the specified port directors may accept a statement setting forth the reasons for failure to produce the bill of lading.

D. § 191.141—Procedures for ''same condition'' (now ''unused'') and rejected merchandise drawback may only be exercised by the specified port directors.

Sec. 2. (A) The authority of the Regional Commissioner, Pacific Region, under 19 CFR § 171.33 to consider and grant relief on supplemental petitions for the District of San Diego, for the pendency of this delegation order is hereby vested in the Fines, Penalties, and Forfeitures Regional Coordinator for the Southwest Region. The authority of the Regional Commissioner, South Central Region, under 19 CFR § 171.33 to consider and grant relief on supplemental petitions, for the pendency of this delegation order, is hereby vested in the Fines, Penalties, and Forfeitures Regional Coordinator for the Southeast Region.

(B) The authority of the Regional Commissioner, Pacific Region, under 19 CFR § 172.33 to consider and grant relief on supplemental petitions for the District of San Diego, for the pendency of this delegation order, is hereby vested in the Fines, Penalties, and Forfeitures Regional Coordinator for the Southwest Region. The authority of the Regional Commissioner, South Central Region, under 19 CFR § 172.33 to consider and grant relief on supplemental petitions, for the pendency of this delegation order, is hereby vested in the Fines, Penalties, and Forfeitures Regional Coordinator for the Southeast Region.

Sec. 3. Pursuant to 19 CFR § 101.2, action by any person pursuant to the authority contained in this Delegation Order shall be valid despite the existence of any statute or regulation, including any provision of the Customs Regulations, which provides that such action shall be taken by some other person. Any person acting under this delegated authority shall be deemed to have complied with any statute or regulation which provides or indicates that it shall be the duty of some other person to perform such action.

Consistent with Customs commitment, as set forth in the Federal Register of August 16, 1994 (at page 41993), these delegations shall not affect the processing of merchandise.

George J. Weise,

Commissioner of Customs.

[FR Doc. 95–1519 Filed 1–17–95; 2:24 pm]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Sustainable Growth

ACTION: Notice—Request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) announces a competitive grants program for nonprofit organizations in support of projects on the theme of Sustainable Growth for audiences in the following geographical areas: Sub-saharan Africa; American Republics; East Asia; Eastern Europe and the NIS; Middle East; and Western Europe. USIA particularly is seeking projects which link American institutions and specialists with partners overseas. New and creative approaches to the issue of sustainable growth will be especially welcome. Proposals which request USIA funding of less than $135,000 and which include significant cost sharing will be deemed more competitive.

Interested applicants are urged to read the complete Federal Register announcement before addressing inquiries to the Office or submitting their proposals.

After the deadline for submitting proposals, USIA officers may not discuss this competition in any way with applicants until final decisions are made.

Announcement name and number: All communications concerning this announcement should refer to the Sustainable Growth Grant Program, announcement number E/P–95–43. Please refer to title and number in all correspondence or telephone calls to USIA.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on March 3, 1995. Faxed documents will not be accepted, nor will documents postmarked on March 3, 1995, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline .

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions must contact the Office of Citizen Exchanges, E/P, Room 216, United States Information Agency, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 619–5326, fax (202) 260–0437, to request detailed application packets, which include award criteria, all application forms, and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please direct inquiries on programmatic matters to the USIA Officer identified under each geographic heading.

ADDRESSES: Applicants must follow all instructions given in the Proposal Submission Instructions and send only complete applications to: U.S. Information Agency, REF: E/P–95–43 Sustainable Growth Grant Competition, Grants Management Division (E/XE), 301 Fourth Street, SW., Room 336, Washington, DC 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the legislation authorizing the Bureau of Education and Cultural Affairs, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview

The Office of Citizen Exchanges works with U.S. private sector non-profit organizations on cooperative international group projects that introduce American and foreign participants to each others' social, economic, and political structures; and their international interests.

Guidelines

Applicants should carefully note the following restrictions and recommendations for proposals in specific geographical areas:

Africa, Sub-Saharan

Economics and the Environment in Africa

Proposals are invited to conduct a person for 3–4 countries in one subregion of Africa (Southern or Eastern or Western Africa) to address environmental issues and their relationship to economic planning. The program should encourage coordination of efforts among the African countries, and it should include at least two phases, one of which would bring African specialists to the U.S., and the other would send U.S. specialists to the selected African subregion. Issues which might be addressed (not necessarily all) include wildlife protection, national parks, environmental law, population dynamics, ecosystem protection, and relationship of such issues to national development planning. Inquiries should be directed to Program Specialist Stephen Taylor, (202) 619–5319, Internet STAYLOR@USIA.GOV

Cultural Property, Tourism, and Economic Development

Proposals are invited to conduct a program for African specialists which would contribute to preservation of

cultural property and national heritage, help publicize cultural attractions and encourage tourism, and address the relationships of these goals to economic planning. The program should address the roles of citizen and government action and encourage cooperation among African countries and the U.S. on these goals. It should also analyze relevant legislation, such as the 1970 UNESCO Convention on Cultural Property and the U.S. Cultural Property Act of 1983. The program should include at least two phases, one of which would bring African specialists to the U.S., and the other would send U.S. specialists to the selected African countries. Inquiries should be directed to Program Specialist Charlotte Peterson, (202) 619–5319, Internet CPETERSO@USIA.GOV

Trade and Sustainable Growth

Proposals are invited to conduct a program for participants from 4–5 African countries which would address issues of trade and investment policies and their relation to national development planning. Issues to be addressed might include incentives for foreign investment, local benefits and problems from foreign investment, impact of tariffs, currency devaluation, development of new exports, and international marketing. Participants in the program might include entrepreneurs, representatives of business associations, government representatives (executive and legislative) or others with influence on these issues. The program should be comprised of at least two phases, one of which would bring African specialists to the U.S. and the other would send U.S. counterparts to participating African countries. Inquiries should be directed to Program Specialist Stephen Taylor, (202) 619–5319, Internet STAYLOR@USIA.GOV

American Republics

In most of this hemisphere, governments, economists, and various ''technocratic'' experts have come to believe that open markets and minimal government restraint on commercial practices lead to higher macro-economic growth rates. But others fear this approach leaves many businesses and their employees behind, ill-equipped to respond to the rough-and-tumble realities of domestic and international competition. USIA seeks proposals that will utilize exchanges to demonstrate that, while innovation and competition inevitably displace some individuals, the increased competition usually leads to greater prosperity not just for entrepreneurs, but for most citizens. Programs which illustrate this through visits to and by the citizens of areas affected by business, plant and base closings, the depletion of mineral deposits, the imposition of new environmental standards, etc., are more likely to have an impact than programs relying solely on extended round-table discussions of macro-economic theory and exposure to national economic policy. Priority will be given to projects dealing with logical sub-regional groupings of no more than four countries (e.g., Central America, the Caribbean, Andean nations, etc.), or to single-country projects in large nations with enormous disparities between rich and poor (e.g., Brazil and Mexico). Inquiries should be directed to Program Specialist Laverne Johnson, (202) 619–5326, Internet LJOHNSON@USIA.GOV

East Asia

Burmese Environmental Project

Proposals are invited to conduct a project that provides an exchange between Burmese non-governmental organizations (NGOs) and U.S. NGOs to examine, through workshops and professional consultation, the role of NGOs in grassroots environmental education and awareness, and the use and promotion of environmentally-appropriate technologies in developing countries.

Burmese Cultural Heritage

Proposals are invited to conduct a project for Burmese NGO representatives, academics, and selected government officials to examine problems of cultural and natural heritage preservation in the face of economic development, and the role of citizen and government action. Projects would examine U.S. approaches to historic preservation and rational economic development.

Thai Cultural Heritage

Project for Thai NGO activists, journalists and selected government officials to examine problems of cultural and natural heritage preservation in the face of economic development, and the role of citizen and government action. Projects would examine U.S. approaches to historic preservation and rational economic development. Inquiries should be directed to Program Specialist Elroy Carlson, (202) 619–5326, Internet ECARLSON@USIA.GOV

Middle East

Environmental Education in the Eastern Mediterranean

Proposals are invited for a program to assist scientists and educators in countries of the Eastern Mediterranean (Syria, Jordan, Lebanon, Israel, Egypt, and the Palestinian Authority) in developing national and regional approaches to incorporating environmental research into university and secondary educational curricula, developing formal environmental education, and promoting general public environmental awareness. The program should include at least two phases, one of which would bring Middle Eastern specialists to the U.S. for approximately one month to consult and work with American specialists on developing curricula, texts, strategies for outreach, and the like. The other phase would send U.S. specialists who had participated in phase one to the Eastern Mediterranean to conduct, in collaboration with their Middle Eastern counterparts, activities such as teacher-training workshops, network building across participant countries, setting plans for cross-country collaboration of educators and their outreach to communities and governments. Inquiries should be directed to Program Specialist Thomas Johnston, (202) 619–5319, Internet TJOHNSTO@USIA.GOV

Water Resources Management in the Gulf States

Proposals are invited for a multi-phased program to address the interrelated issues of water resources management, environmental protection, and sustainable economic development in Kuwait, Saudi Arabia, Qatar, Bahrain, United Arab Emirates, and Oman. Emphasis should be given to facilitating interaction among specialists in these countries and U.S. counterparts for the sharing of ideas and to develop a feasible plan for governmental and NGO action in addressing these topics. The program design should include activities in both the United States and the Gulf which would cover an assessment of needs, development of collaborative networks and action agendas, as well as outreach to wider audiences. At least one phase would bring specialists from the Gulf to the U.S. and one phase would send U.S. specialists to the Gulf. Inquiries should be directed to Program Specialist Thomas Johnston, (202) 619–5319, Internet TJOHNSTO@USIA.GOV

Western Europe

Pacific Northwest Environment Cooperation

USIA seeks a proposal designed to exchange environmental experts between the states of the Pacific Northwest and British Columbia. The exchange would involve environmental

leaders, specialists in environmental law, and representatives of the governments of British Columbia, Washington, and Oregon, who would arrange for reciprocal visits to research comparative environmental law in their jurisdictions, culminating in their drafting recommendations to their respective governments. Inquiries should be directed to Program Specialist Christina Miner, (202) 619–5319, Internet CMINER@USIA.GOV

Program Parameters

The Office of Citizen Exchanges strongly encourages the coordination of activities with respected universities, professional associations, and major cultural institutions in the U.S. and abroad, but particularly in the U.S. Projects should be intellectual and cultural, not technical. Vocational training (an occupation other than one requiring a baccalaureate or higher academic degree; e.g., clerical work, auto maintenance, etc. and other occupations requiring less than two years of higher education) and technical training (special and practical knowledge of a mechanical or a scientific subject which enhances mechanical, narrowly scientific, or semi-skilled capabilities) are ineligible for support. In addition, scholarship programs are ineligible for support.

The Office does not support proposals limited to conferences or seminars (i.e., one to fourteen-day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only insofar as they are part of a larger project in duration and scope which is receiving USIA funding from this competition. USIA-supported projects may include internships; study tours; short-term, non-technical training; and extended, intensive workshops taking place in the United States or overseas. The themes addressed in exchange programs must be of long-term importance rather than focused exclusively on current events or short-term issues. In every case, a substantial rationale must be presented as part of the proposal, one that clearly indicates the distinctive and important contribution of the overall project, including where applicable the expected yield of any associated conference. No funding is available exclusively to send U.S. citizens to conferences or conference-type seminars overseas; neither is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States. Projects that duplicate what is routinely carried out by private sector and/or public sector operations will not be considered. The Office of Citizen Exchanges strongly recommends that applicants consult with host country USIS posts, prior to submitting proposals.

Selection of Participants

All grant proposals should clearly describe the types of persons who will participate in the program as well as the process by which participants will be selected. It is recommended that programs in support U.S. internships include letters tentatively committing host institutions to support the internships. In the selection of foreign participants, USIA and USIS posts retain the right to nominate all participants and to accept or deny participants recommended by grantee institutions. However, grantee institutions are often asked by USIA to suggest names of potential participants. The grantee institution will also provide the names of American participants and brief (two pages) biographical data on each American participant to the Office of Citizen Exchanges for information purposes. Priority will be given to foreign participants who have not previously traveled to the United States.

Additional Guidance

The Office of Citizen Exchanges offers the following additional guidance to prospective applicants:

1. Except where noted in the text, the Office of Citizen Exchanges encourages project proposals involving more than one country. Pertinent rationale which links countries in multi-country projects should be included in the submission. Single-country projects that are clearly defined and possess the potential for creating and strengthening continuing linkages between foreign and U.S. institutions are also welcome.

2. Proposals for bilateral programs are subject to review and comment by the USIS post in the relevant country, and pre-selected participants will also be subject to USIS post review.

3. Bilateral programs should clearly identify the counterpart organization and provide evidence of the organization's participation.

4. The Office of Citizen Exchanges will consider proposals for activities which take place exclusively in other countries when USIS posts are consulted in the design of the proposed program and in the choice of the most suitable venues for such programs.

5. Office of Citizen Exchanges grants are not given to support projects whose focus is limited to technical or vocational subjects, or for research projects, for publications funding, for student and/or teacher/faculty exchanges, for sports and/or sports related programs. Nor does this Office provide scholarships or support for long-term (a semester or more) academic studies.

Funding

Proposals which request USIA funding of less than $135,000 and which include significant cost sharing will be deemed more competitive. Organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000. Applicants are invited to provide both an all-inclusive budget as well as separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding. While an all-inclusive budget must be provided with each proposal, separate component budgets are optional. Since USIA grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support. Cost sharing may be in the form of allowable direct or indirect costs.

The Recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, Attachment E—Cost Sharing and Matching, and should be described in the proposal.

Eligible Costs

The following project costs are eligible for consideration for funding:

1. International and domestic air fares; visas; transit costs; ground transportation costs.

2. Per Diem. For the U.S. program, organizations have the option of using a flat $140/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S., the published Federal per diem rates must be used.

Note: U.S. escorting staff must use the published Federal per diem rates, not the flat rate.

3. Interpreters. If needed, interpreters for the U.S. program are provided by the U.S. State Department Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors who need interpretation. USIA grants do not pay for foreign interpreters to accompany delegations from their home country.

Grant proposal budgets should contain a flat $140/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

4. Book and cultural allowance. Participants are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a participant book allowance of $50. U.S. staff do not get these benefits.

5. Consultants. May be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

6. Room rental, which generally should not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop, and translate materials for participants.

8. One working meal per project. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner; excluding room rental. The number of invited guests may not exceed participants by more than a factor of two to one.

9. A return travel allowance of $70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. In most cases, USIA-funded delegates will be covered under the terms of a USIA-sponsored health insurance policy with the premium is paid by USIA directly to the insurance company. For additional information on insurance coverage, contact the E/P program officer.

11. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package. Please refer to the Application Package for complete budget guidelines.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the Application Packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the budget and contract offices, as well the USIA geographic regional office and the USIS post overseas, where appropriate. Proposals may also be reviewed by the USIA's Office of General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

USIA will consider proposals based on their conformance with the objectives and considerations already stated in this RFP, as well as the following criteria:

1. Quality of Program Idea

Proposals should exhibit originality, substance, precision, and relevance to the Agency mission.

2. Program Planning

Detailed agenda and relevant work plan should demonstrate substance undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to Achieve Program Objectives

Objectives should be reasonable, feasible, and flexible. Proposal should clearly demonstrate how the institution will meet the program objectives and plan.

4. Multiplier Effect

Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Value to U.S.—Partner Country Relations

Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner.

6. Institutional Capacity

Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goal.

7. Institution Reputation/Ability

Proposal should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-On Activities

Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA supported programs are not isolated events.

9. Evaluation Plan

Proposals should provide a plan for a thorough and objective evaluation of the program/project by the grantee institution.

10. Cost-Effectiveness

The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. Cost-Sharing

Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. Support of Diversity

Proposal should demonstrate the recipients' commitment to promoting the awareness and understanding of diversity throughout the program. This can be accomplished through documentation (such as a written statement or account) summarizing past and/or on-going activities and efforts that further the principle of diversity within both their organization and their activities.

Notice

The Office of Citizen Exchanges reserves the right to reduce, revise, or increase the grant award. The terms and conditions published in the Request for Proposal (RFP) are binding and may not be modified by any USIA representative. Explanatory information provided by USIA that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by the Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about April 28, 1995. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: January 11, 1995.

Dell Pendergrast,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 95–1177 Filed 1–18–95; 8:45 am]

BILLING CODE 8230–01–M

Conflict Resolution

ACTION: Notice—Request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) announces a competitive grants program for nonprofit organizations in support of projects on the theme of Conflict Resolution for audiences in the following geographical areas: Sub-saharan Africa; American Republics; East Asia (Korea, regional); Eastern Europe and the NIS; South Asia; and Western Europe (Northern Ireland, Greece-Cyprus-Turkey). USIA particularly is seeking projects which link American institutions and specialists with partners overseas. New and creative approaches to the issue of conflict resolution will be especially welcome. Proposals which request USIA funding of less than $135,000 and which include significant cost sharing will be deemed more competitive.

Interested applicants are urged to read the complete Federal Register announcement before addressing inquiries to the Office or submitting their proposals.

After the deadline for submitting proposals, USIA officers may not discuss this competition in any way with applicants until final decisions are made.

Announcement name and number: All communications concerning this announcement should refer to the Conflict Resolution Grant Program, announcement number E/P–95–39. Please refer to title and number in all correspondence or telephone calls to USIA.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on March 3, 1995. Faxed documents will not be accepted, nor will documents postmarked on March 3, 1995, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions must contact the Office of Citizen Exchanges, E/PL, Room 216, United States Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, telephone (202) 619–5326, fax (202) 260–0437, to request detailed application packets, which include award criteria, all application forms, and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please direct inquiries on programmatic matters to the USIA Officer identified under each geographic heading.

ADDRESSES: Applicants must follow all instructions given in the Proposal Submission Instructions (PSI) and send only complete applications to: U.S. Information Agency, REF: E/P–95–39 Conflict Resolution Grant Competition, Grants Management Division (E/XE), 301 Fourth Street, S.W., Room 336, Washington, D.C. 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the legislation authorizing the Bureau of Education and Cultural Affairs, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview

The Office of Citizen Exchanges works with U.S. private sector non-profit organizations on cooperative international group projects that introduce American and foreign participants to each others' social, economic, and political structures; and international interests.

Guidelines

Applicants should carefully note the following restrictions and recommendations for proposals in specific geographical areas:

Africa, Sub-Saharan

Proposals are invited to conduct a program to promote democratic society through the constructive management of conflict. The program can be defined at the local level or national level for one or more countries in Sub-saharan Africa. When conflict has arisen along religious, cultural, linguistic, or class lines, it is usually framed in pejorative or narrow terms which impede understanding and resolution. Sometimes, conflict has been fomented along such lines for political purposes. This program should address such problems by helping to develop skills to frame issues in non-disparaging terms which are amenable to negotiation and consensus building and to develop mechanisms for making community decisions and managing power in ways which respect diversity while advancing common interests. The program should be comprised of at least two phases, one of which would bring African participants to the U.S., and the other phase would send U.S. counterparts to Africa.

Inquiries should be directed to Program Specialist Charlotte Peterson, (202) 619–5319, Internet CPETERSO@USIA.GOV

American Republics

USIA is interested in receiving proposals for the development of exchange programs to support conflict resolution in Haiti. Observers have long attributed that country's historic inability to construct a modern civil society at least in part to a ''winner take all'' attitude that governs relationships at every level. In a populace that is sharply divided in almost every way imaginable—rich and poor, rural and urban, educated and illiterate, civil and military, etc.—with almost nothing in between, there is little incentive or precedent for compromise. Instead, each side is continuously at war with the other, resulting in predictable cycles of victimization, aggression, retaliation and revenge. Proposing organizations should seek to work with indigenous counterparts that can help to introduce and then to institutionalize functional conflict resolution strategies in Haiti. Inquiries should be directed to Program Specialist Laverne Johnson, (202) 619–5326, Internet LJOHNSON@USIA.GOV

Western Europe

USIA is interested in receiving projects for Western Europe in the following fields:

—Proposals on Northern Ireland presenting creative ideas to exchange grassroots/community based participants to study models of reconciliation and mediation techniques through site visits, workshops and internships;

—Proposals for Greece, Cyprus and Turkey designed to improve professional media skills. The program might commence with a four to six week seminar for participants from the three countries which would serve to establish linkages between the media in the three countries, and their American counterparts, and perhaps challenge some of the stereotypes about each country. This program should include a minimum of a one-week internship with either a TV station, radio station, or newspapers in order for the participants to have first-hand

experience with U.S. journalists and medial outlets. Inquiries should be directed to Program Specialist Christina Miner, (202) 619–5319, Internet CMINER@USIA.GOV

East Asia

USIA requests proposals in the following areas:

—Projects that address the North-South dialogue in Korea;

—Regional or subregional projects on the role and use of conflict resolution to address and resolve social issues. Projects might deal with women's issues, labor rights or ethnic/tribal tensions. Inquiries should be directed to Program Specialist Elroy Carlson, (202) 619–5326, Internet ECARLSON@USIA.GOV

Eastern and Central Europe and the NIS

USIA will accept proposals for the development of an exchange program to support conflict resolution in Eastern and Central Europe and the NIS. Proposals may not include support for conferences and symposia. Proposals should address reduction of tension among ethnic groups by (1) development of national or regional indigenous institutions through training of trainers in negotiation and conflict resolution or by (2) implementation of specific projects designed to encourage cooperation among ethnic communities. The latter might include issues related to local government administration or civic education at the secondary level. Inquiries should be directed to Program Specialist Steve Sutton, (202) 619–5326, Internet SSUTTON@USIA.GOV

South Asia

Proposals are invited for an exchange program to develop pilot projects in the field of human rights education and conflict resolution in selected South Asian countries. A thorough consciousness of and respect for universal human rights as declaimed by the United Nations General Assembly is fundamental to peaceful conflict resolution and to the establishment and operation of genuinely democratic institutions. This project would develop educational programs for human rights activists which would focus not, as has usually been the case, on reacting to human rights violations but rather on preventing violations and conflict through instilling a general awareness of and insistence upon human rights as a point of commonality. The operating assumption is that when people insist on the recognition of their own and others' rights, conflict is resolved more constructively and democracy can be developed as a truly popular movement. The project should include theoretical and experiential training in the United States, lasting several weeks, for a group of not less than eight human rights activists from South Asia and a follow-on, reinforcement visit to South Asia by American specialists to collaborate in conducting workshops, developing institutes, etc. Inquiries should be directed to Program Specialist Thomas Johnston, (202) 619–5319, Internet TJOHNSTO@USIA.GOV

Program Parameters

The Office of Citizen Exchanges strongly encourages the coordination of activities with respected universities, professional associations, and major cultural institutions in the U.S. and abroad, but particularly in the U.S. Projects should be intellectual and cultural, not technical. Vocational training (an occupation other than one requiring a baccalaureate or higher academic degree; i.e., clerical work, auto maintenance, etc. and other occupations requiring less than two years of higher education) and technical training (special and practical knowledge of a mechanical or a scientific subject which enhances mechanical, narrowly scientific, or semi-skilled capabilities) are ineligible for support. In addition, scholarship programs are ineligible for support.

The Office does not support proposals limited to conferences or seminars (i.e., one to fourteen-day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only insofar as they are part of a larger project in duration and scope which is receiving USIA funding from this competition. USIA-supported projects may include internships; study tours; short-term, non-technical training; and extended, intensive workshops taking place in the United States or overseas. The themes addressed in exchange programs must be of long-term importance rather than focused exclusively on current events or short-term issues. In every case, a substantial rationale must be presented as part of the proposal, one that clearly indicates the distinctive and important contribution of the overall project, including where applicable the expected yield of any associated conference. No funding is available exclusively to send U.S. citizens to conferences or conference-type seminars overseas; neither is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States. Projects that duplicate what is routinely carried out by private sector and/or public sector operations will not be considered. The Office of Citizen Exchanges strongly recommends that applicants consult with host country USIS posts, *prior* to submitting proposals.

Selection of Participants

All grant proposals should clearly describe the types of persons who will participate in the program as well as the process by which participants will be selected. It is recommended that programs in support of U.S. internships include letters tentatively committing host institutions to support the internships. In the selection of foreign participants, USIA and USIS posts retain the right to nominate all participants and to accept or deny participants recommended by grantee institutions. However, grantee institutions are often asked by USIA to suggest names of potential participants. The grantee institution will also provide the names of American participants and brief (two pages) biographical data on each American participant to the Office of Citizen Exchanges for information purposes. Priority will be given to foreign participants who have not previously travelled to the United States.

Additional Guidance

The Office of Citizen Exchanges offers the following additional guidance to prospective applicants:

1. Except where noted in the text, the Office of Citizen Exchanges encourages projects proposals involving more than one country. Pertinent rationale which links countries in multi-country projects should be included in the submission.

2. Proposals for bilateral programs are subject to review and comment by the USIS post in the relevant country, and pre-selected participants will also be subject to USIS post review.

3. Bilateral programs should clearly identify the counterpart organization and provide evidence of the organization's participation.

4. The Office of Citizen Exchanges will consider proposals for activities which take place exclusively in other countries when USIS posts are consulted in the design of the proposed program and in the choice of the most suitable venues for such programs.

5. Office of Citizen Exchanges grants are not given to support projects whose focus is limited to technical or vocational subjects, or for research projects, for publications funding, for student and/or teacher/faculty exchanges, for sports and/or sports related programs. Nor does this office provide scholarships or support for

long-term (a semester or more) academic studies.

Funding

Proposals which request USIA funding of less than $135,000 and which include significant cost sharing will be deemed more competitive. Organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000. Applicants are invited to provide both an all-inclusive budget as well as separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding. While an all-inclusive budget must be provided with each proposal, separate component budgets are optional. Since USIA grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support. Cost sharing may be in the form of allowable direct or indirect costs.

The Recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, Attachment E—Cost Sharing and Matching and should be described in the proposal.

Eligible Costs

The following project costs are eligible for consideration for funding:

1. International and domestic air fares; visas; transit costs; ground transportation costs.

2. Per Diem. For the U.S. program, organizations have the option of using a flat $140/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S., the published Federal per diem rates must be used.

Note: U.S. escorting staff must use the published Federal per diem rates, not the flat rate.

3. Interpreters. If needed, interpreters for the U.S. program are provided by the U.S. State Department Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors who need interpretation. USIA grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $140/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

4. Book and cultural allowance. Participants are entitled to and escorts are reimbursed a one-tome cultural allowance of $150 per person, plus a participant book allowance of $50. U.S. staff do not get these benefits.

5. Consultants. May be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

6. Room rental, which generally should not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop, and translate materials for participants.

8. One working meal per project. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner; excluding room rental. The number of invited guests may not exceed participants by more than a factor of two to one.

9. A return travel allowance of $70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. In most cases, USIA-funded delegates will be covered under the terms of a USIA-sponsored health insurance policy with the premium is paid by USIA directly to the insurance company. For additional information on insurance coverage, contact the E/P program officer.

11. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package. Please refer to the Application Package for complete budget guidelines.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the Application Packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the budget and contract offices, as well the USIA geographic regional office and the USIS post overseas, where appropriate. Proposals may also be reviewed by the USIA's Office of General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

USIA will consider proposals based on their conformance with the objectives and considerations already stated in this RFP, as well as the following criteria:

1. Quality of Program Idea

Proposals should exhibit originality, substance, precision, and relevance to the Agency mission.

2. Program Planning

Detailed agenda and relevant work plan should demonstrate substance undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to Achieve Program Objectives

Objectives should be reasonable, feasible, and flexible. Proposal should clearly demonstrate how the institution will meet the program objectives and plan.

4. Multiplier Effect

Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Value to U.S.—Partner Country Relations

Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner.

6. Institutional Capacity

Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goal.

7. Institution Reputation/Ability

Proposal should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-On Activities

Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA supported programs are not isolated events.

9. Evaluation Plan

Proposals should provide a plan for a thorough and objective evaluation of the program/project by the grantee institution.

10. Cost-Effectiveness

The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. Cost-Sharing

Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. Support of Diversity

Proposal should demonstrate the recipients' commitment to promoting the awareness and understanding of diversity throughout the program. This can be accomplished through documentation (such as a written statement or account) summarizing past and/or on-going activities and efforts that further the principle of diversity within both their organization and their activities.

Notice

The Office of Citizen Exchanges reserves the right to reduce, revise, or increase the grant award. The terms and conditions published in the Request For Proposals (RFP) are binding and may not be modified by any USIA representative. Explanatory information provided by USIA that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by the Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about April 28, 1995. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: January 11, 1995.

Dell Pendergrast,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 95–1178 Filed 1–18–95; 8:45 am]

BILLING CODE 8230–01–M

Local Government

ACTION: Notice—Request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) announces a competitive grants program for nonprofit organizations in support of projects on the theme of LOCAL GOVERNMENT for audiences in the following geographical areas: Sub-saharan Africa; American Republics; East Asia (Peoples Republic of China); and Western Europe (Italy). USIA particularly is seeking projects which link American institutions and specialists with partners overseas. New and creative approaches to the issue of local government will be especially welcome. Proposals which request USIA funding of less than $135,000 and which include significant cost sharing will be deemed more competitive.

Interested applicants are urged to read the complete Federal Register announcement before addressing inquiring to the Office or submitting their proposals.

After the deadline for submitting proposals, USIA officers may not discuss this competition in any way with applicants until final decisions are made.

Announcement name and number: All communications concerning this announcement should refer to the Local Government Grant Program, announcement number E/P–95–41. Please refer to title and number in all correspondence or telephone calls to USIA.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on March 3, 1995. Faxed documents will not be accepted, nor will documents postmarked on March 3, 1995, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions must contact the Office of Citizen Exchanges, E/P, Room 216, United States Information Agency, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 619–5326, fax (2020 260–0437 to request detailed application packets, which include award criteria, all application forms, and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please direct inquiries on programmatic matters to the USIA Officer identified under each geographic heading.

ADDRESSES: Applicants must follow all instructions given in the Proposal Submission Instructions and send only complete applications to: U.S. Information Agency, REF: E/P–95–41 Local Government Grant Competition, Grants Management Division (E/XE), 301 Fourth Street, SW., Room 336, Washington, DC 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the legislation authorizing the Bureau of Education and Cultural Affairs, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview

The Office of Citizen Exchanges works with U.S. private sector non-profit organizations on cooperative international group projects that introduce American and foreign participants to each others' social, economic, and political structures; and international interests.

Guidelines

Applicants should carefully note the following restrictions and recommendations for proposals in specific geographical areas:

Africa

The Role of Local Government in a Democracy

Proposals are initiated to conduct a program for 3–4 countries in one subregion of Africa (southern, eastern, central, or western) which would promote effective governmental administration and planning at the grassroots level. Issues to be addressed might include local-national government relations, fundraising and budgeting at the local level, methods for assessing local needs and resources, public-private partnerships for local planning and development, services at local level (e.g., water, health, refuse disposal, zoning, community planning, etc) and administrative skills. Participants would include local government administrators and policy makers (e.g., managers, mayors, local council representatives) and persons who liaise between localities and national governments. The program should include at least two phases, one of which would bring Africans to the U.S. and the other of which would send U.S. counterparts to participating

African countries. Inquiries should be directed to Program Specialist Stephen Taylor, (202) 619–5319, Internet STAYLOR@USIA.GOV

American Republics

Good Governance in the Americas

USIA is interested in proposals for programs which will foster effective administration in local and regional municipal governments. Programs might examine and seek to improve relationships among local executive, legislative, and judicial elements, or they might address the knowledge and skills necessary to administer one or more of these branches of local government. Program topics might include one or more of the following: judicial administration, budget development, financial management and oversight, professionalization of the civil service (e.g., the use of city managers), tax policies and mechanisms, election practices, management of municipal services, privatization of government property, consumer protection, business regulation (as opposed to control), licensing, and environmental protection. Inquiries should be directed to Program Specialist Laverne Johnson, (202) 619–5326, Internet LJOHNSON@USIA.GOV

Western Europe

Italian Local Government

USIA is interested in proposals with a focus on regional governments in Italy. The exchange would have three phases. In Phase 1 a team from the American grantee institution would visit five cities in Italy (Rome, Palermo, Naples, Bologna, and Milan) to select, in conjunction with the USIS post, participants in a U.S. study tour. In Phase 2, fifteen participants, three from each city, would travel to the U.S. for a two-week study tour focussing on regional government and separation of powers between federal and state governments. In Phase 3, American participants selected from the interlocutors that the groups met during Phase 2 would return to Italy and conduct short (one-day) seminars in each of the five cities. Inquiries should be directed to Program Specialist Christina Miner, (202) 619–5319, Internet CMINER@USIA.GOV

East Asia

Chinese Federalism Project

Proposals are invited to conduct a project for Chinese provincial and municipal legislators to observe how U.S. state governments function and how the Federal government and state governments interact.

Chinese Local Elected Officials Project

Proposals are invited to conduct a project to bring Chinese Ministry of Civil Affairs officials from the provincial level to the U.S. to observe how U.S. local officials are chosen, what their powers are, how they respond to the needs of their constituencies, and what happens when they are not sufficiently responsive to their constituencies' needs.

Inquiries should be directed to Program Specialist Elroy Carlson, (202) 619–5326, Internet ECARLSON@USIA.GOV

Program Parameters

The Office of Citizen Exchanges strongly encourages the coordination of activities with respected universities, professional associations, and major cultural institutions in the U.S. and abroad, but particularly in the U.S. Projects should be intellectual and cultural, not technical. Vocational training (an occupation other than one requiring a baccalaureate or higher academic degree; i.e., clerical work, auto maintenance, etc. and other occupations requiring less than two years of higher education) and technical training (special and practical knowledge of a mechanical or a scientific subject which enhances mechanical, narrowly scientific, or semi-skilled capabilities) are ineligible for support. In addition, scholarship programs are ineligible for support.

The Office does not support proposals limited to conferences or seminars (i.e., one- to fourteen-day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only insofar as they are part of a larger project in duration and scope which is receiving USIA funding from this competition. USIA-supported projects may include internships; study tours; short-term, non-technical training; and extended, intensive workshops taking place in the United States or overseas. The themes addressed in exchange programs must be of long-term importance rather than focused exclusively on current events or short-term issues. In every case, a substantial rationale must be presented as part of the proposal, one that clearly indicates the distinctive and important contribution of the overall project, including where applicable the expected yield of any associated conference. No funding is available exclusively to send U.S. citizens to conferences or conference-type seminars overseas; neither is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States. Projects that duplicate what is routinely carried out by private sector and/or public sector operations will not be considered. The Office of Citizen Exchanges strongly recommends that applicants consult with host country USIS posts, prior to submitting proposals.

Selection of Participants

All grant proposals should clearly describe the types of persons who will participate in the program as well as the process by which participants will be selected. It is recommended that programs in support of U.S. internships include letters tentatively committing host institutions to support the internships. In the selection of foreign participants, USIA and USIS posts retain the right to nominate all participants and to accept or deny participants recommended by grantee institutions. However, grantee institutions are often asked by USIA to suggest names of potential participants. The grantee institution will also provide the names of American participants and brief (two pages) biographical data on each American participant to the Office of Citizen Exchanges for information purposes. Priority will be given to foreign participants who have not previously travelled to the United States.

Additional Guidance

The Office of Citizen Exchanges offers the following additional guidance to prospective applicants:

1. The Office of Citizen Exchanges encourages project proposals involving more than one country. Pertinent rationale which links countries in multi-country projects should be included in the submission. Single-country projects that are clearly defined and possess the potential for creating and strengthening continuing linkages between foreign and U.S. institutions are also welcome.

2. Proposals for bilateral programs are subject to review and comment by the USIS post in the relevant country, and pre-selected participants will also be subject to USIS post review.

3. Bilateral programs should clearly identify the counterpart organization and provide evidence of the organization's participation.

4. The Office of Citizen Exchanges will consider proposals for activities which take place exclusively in other countries when USIS posts are consulted in the design of the proposed program and in the choice of the most suitable venues for such programs.

5. Office of Citizen Exchanges grants are not given to support projects whose focus is limited to technical or vocational subjects, or for research projects, for publications funding, for student and/or teacher/faculty exchanges, for supports and/or sports related programs. Nor does this office provide scholarships or support for long-term (a semester or more) academic studies.

Funding

Proposals which request USIA funding of less than $135,000 and which include significant cost sharing will be deemed more competitive. Organizations with less than fours of successful experience in managing international exchange programs are limited to $60,000. Applicants are invited to provide both an all-inclusive budget as well as separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding. While an all-inclusive budget must be provided with each proposal, separate component budgets are optional. Since USIA grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support. Cost sharing may be in the form of allowable direct or indirect costs.

The Recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, Attachment E–Cost Sharing and Matching and should be described in the proposal.

Eligible Costs

The following project costs are eligible for consideration for funding:

1. International and domestic air fares; visas; transit costs; ground transportation costs.

2. Per Diem. For the U.S. program, organizations have the option of using a flat $140/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S., the published Federal per diem rates must be used. NOTE: U.S. escorting staff must use the published Federal per diem rates, not the flat rate.

3. Interpreters. If needed, interpreters for the U.S. program are provided by the U.S. State Department Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors who need interpretation. USIA grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $140/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

4. Book and cultural allowance. Participants are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a participant book allowance of $50. U.S. staff do not get these benefits.

5. Consultants. May be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

6. Room rental, which generally should not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop, and translate materials for participants.

8. One working meal per project. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner; excluding room rental. The number of invited guests may not exceed participants by more than a factor of two to one.

9. A return travel allowance of $70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. In most cases, USIA-funded delegates will be covered under the terms of a USIA-sponsored health insurance policy where the premium is paid by USIA directly to the insurance company. For additional information on insurance coverage, contact the E/P program officer.

11. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the Proposal Submission Instructions. Please refer to these Instructions for complete budget guidelines.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the Proposal Submission Instructions. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the budget and contract offices, as well the USIA geographic regional office and the USIS post overseas, where appropriate. Proposals may also be reviewed by the USIA's Office of General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

USIA will consider proposals based on their conformance with the objectives and considerations already stated in this RFP, as well as the following criteria:

1. Quality of Program Idea

Proposals should exhibit originally, substance, precision, and relevance to the Agency mission.

2. Program Planning

Detailed agenda and relevant work plan should demonstrate substance undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to Achieve Program Objectives

Objectives should be reasonable, feasible, and flexible. Proposal should clearly demonstrate how the institution will meet the program objectives and plan.

4. Multiplier Effect

Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Value to U.S.—Partner Country Relations

Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner.

6. Institutional Capacity

Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goal.

7. Institution Reputation/Ability

Proposal should demonstrate an institutional record of successful

exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-on Activities

Proposal should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA supported programs are not isolated events.

9. Evaluation Plan

Proposals should provide a plan for a thorough and objective evaluation of the program/project by the grantee institution.

10. Cost-Effectiveness

The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. Cost-Sharing

Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. Support of Diversity

Proposal should demonstrate the recipients' commitment to promoting the awareness and understanding of diversity throughout the program. This can be accomplished through documentation (such as a written statement or account) summarizing past and/or on-going activities and efforts that further the principle of diversity within both their organization and their activities.

Notice

The Office of Citizen Exchanges reserves the right to reduce, revise, or increase the grant award. The terms and conditions published in the Request for Proposals (RFP) are binding and may not be modified by any USIA representative. Explanatory information provided by USIA that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by the Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about April 28, 1995. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: January 11, 1995.

Dell Pendergrast,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 95–1180 Filed 1–18–95; 8:45 am]

BILLING CODE 8230–01–M

Citizen Networking

ACTION: Notice—Request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) announces a competitive grants program for non-profit organizations in support of projects on the theme of Citizen Networking for audiences in the following geographical areas: Sub-saharan Africa; American Republics; East Asia (Japan, Burma, Regional); and Middle East and South Asia. USIA particularly is seeking projects which link American institutions and specialists with partners overseas. New and creative approaches to the issue of citizen networking will be especially welcome. Proposals which request USIA funding of less than $135,000 and which include significant cost sharing will be deemed more competitive.

Interested applicants are urged to read the complete Federal Register announcement before addressing inquiries to the Office or submitting their proposals.

After the deadline for submitting proposals, USIA officers may not discuss this competition in any way with applicants until final decisions are made.

Announcement name and number: All communications concerning this announcement should refer to the Citizen Networking Grant Program, announcement number E/P–95–40. Please refer to title and number in all correspondence or telephone calls to USIA.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on March 3, 1995. Faxed documents will not be accepted, nor will documents postmarked on March 3, 1995, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions must contact the Office of Citizen Exchanges, E/P, Room 216, United States Information Agency, 301 4th Street, SW., Washington, DC 20547, telephone (202) 619–5326, fax (202) 260–0437, to request detailed application packets, which include award criteria, all application forms, and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please direct inquiries on programmatic matters to the USIA Officer identified under each geographic heading.

ADDRESSES: Applicants must follow all instructions given in the Proposal Submission Instructions (PSI) and send only complete applications to: U.S. Information Agency, REF: E/P–95–40 Citizen Networking Grant Competition, Grants Management Division (E/XE), 301 Fourth Street, SW., Room 336, Washington, DC 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the legislation authorizing the Bureau of Education and Cultural Affairs, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview

The Office of Citizen Exchanges works with U.S. private sector non-profit organizations on cooperative international group projects that introduce American and foreign participants to each others' social, economic, and political structures; and international interests.

Guidelines

Applicants should carefully note the following restrictions and recommendations for proposals in specific geographical areas:

Africa, Sub-Saharan

Building Grassroots Citizen Organizations in Africa

Proposals are invited to conduct a program for selected African countries which would contribute to the creation and management of non-governmental citizen organizations which address community needs, encourage community participation in problem solving, quality of life enhancement and professional development. The program should give particular attention to the development of grassroots organizations which contribute to democracy, and it should address such organizational needs as fundraising, budgeting, publicity, setting goals and objectives,

and management structure and techniques. The program should include at least two phases, one of which would bring African organizational and community leaders to the U.S., and the other would send qualified Americans to Africa. Inquiries should be directed to Program Specialist Charlotte Peterson, (202) 619–5319, Internet CPETERSO@USIA.GOV

American Republics

Building Grassroots Citizen Organizations in the American Republics

USIA seeks to assist in the development of indigenous, non-governmental, professional, civic, youth, philanthropic, and issue-oriented institutions and citizen exchanges organizations in the American Republics region. These projects should link the U.S. organization's exchange interests with counterpart institutions and groups within the region. Proposals should serve as an important avenue for community participation in problem solving, quality of life enhancement and professional development. Priority will be given to proposals from U.S. organizations which have regional partner organizations, which will assist in the realization of program goals and objectives and will themselves be enhanced by the program. Examples could include private and non-governmental organizations that work geographically with a broad range of interest groups, such as Partners of the Americas or Sister Cities International, or those seeking to work across a broad geographic area with very specialized interest groups, such as Mothers Against Drunk Driving, the League of Women Voters, or any of the various organizations that promote rights for minorities, the indigenous, the handicapped, and so forth. In all cases, preference will be given to projects promising the highest possible impact at the lowest possible cost. Inquiries should be directed to Program Specialist Laverne Johnson, (202) 619–5326, Internet LJOHNSON@USIA.GOV

East Asia

Japanese Non-Governmental Organization Leaders

—Proposals are invited to conduct a project for Japanese NGO leaders concerned with commenters' rights, the environment and political reform which bring the participants together with American counterparts to discuss fundraising, recruitment, government relations, tax benefits and other areas of mutual interest, with the overall goal of building bridges between Japanese NGOs and NGOs with similar objectives in the U.S.

Burmese Non-Governmental Organization Leaders

—Proposals are invited to conduct a project to assist emerging Burmese NGOs and associations in development effective organization, operations, and management, including questions of fundraising and financial management, membership, project development and management, training, publicity, domestic and international networking. An effective project would consist of both in-country workshops and U.S.-based tours and short internships.

Regional Non-Governmental Organization Leaders

—Proposals are invited to conduct a regional or subregional project in which NGO grassroots leaders are introduced to effective strategies for management and impact, including fundraising, community building, lobbying for public support and dealing with the media. Projects might focus on consumer advocacy groups or women's organizations. Inquiries should be directed to Program Specialist Elroy Carlson, (202) 619–5326, Internet ECARLSON@USIA.GOV

Middle East and South Asia

Development of Women's Resource Centers in the Middle East

Proposals are invited to conduct a multi-phased program which would help develop resource centers for women in selected Middle Eastern countries. Such centers, staffed by professionals on a voluntary or paid basis, would provide information, advice, and services to any woman requesting them on such topics as legal rights, educational and professional opportunities, financial management, and health care for women and children. The program should bring women political/governmental leaders, NGO executives, and social service providers from Egypt, Syria, and Jordan together with their American counterparts to lay the groundwork for establishing, funding, staffing, and operating women's resource centers in their home countries. The program should bring an approximately equal number of women from each of the Middle Eastern Countries to the United States for three or more weeks of consultation and experiential learning, and a return trip for American women engaged in the development and operation of resource centers for conducting workshops, advising, etc. Inquiries should be directed to Program Specialist Thomas Johnston, (202) 619–5319, Internet TJOHNSTON@USIA.GOV

Women's Organizations and Conflict Management in South Asia

Proposals are invited to conduct an exchange program between women educators, NGO representatives, and social activists from India, Pakistan, and other South Asian countries and their American counterparts to share information and to develop a regional and international network of organizations involved in social and legal issues affecting women. The primary agenda of the project would be to increase the participants' awareness of the commonality of issues confronted by women and to stimulate the development of mutually supportive organizations focussed on managing and resolving conflict and the achievement of women's goals through women's empowerment. More broadly, the program would encourage participants to expand their consideration from purely women's issues to international issues and the role of women in international conflict resolution. The project would entail at least two phases, one bringing women from South Asia to the United States for two-to-three weeks to experience organizations which work for the empowerment of women such as the League of Women Voters, the Women's International League for Peace and Freedom, the National Council of Women, the American Civil Liberties Union, and to visit one or more creditable women's studies programs at major universities. The second phase would involve American women activists traveling to the region to work with participants in the first phase in developing workshops and study groups, establishing organizations focussed on women's issues, etc. Inquiries should be directed to Program Specialist Charlotte Peterson, (202) 619–5319, Internet CPETERSO@USIA.GOV

Program Parameters

The Office of Citizen Exchanges strongly encourages the coordination of activities with respected universities, professional associations, and major cultural institutions in the U.S. and abroad, but particularly in the U.S. Projects should be intellectual and cultural, not technical. Vocational training (an occupation other than one requiring a baccalaureate or higher academic degree; i.e., clerical work, auto maintenance, etc. and other occupations requiring less than two years of higher education) and technical training

(special and practical knowledge of a mechanical or a scientific subject which enhances mechanical, narrowly scientific, or semi-skilled capabilities) are ineligible for support. In addition, scholarship programs are ineligible for support.

The Office does not support proposals limited to conferences or seminars (i.e., one to fourteen-day programs with plenary sessions, main speakers, panels, and a passive audience).

It will support conferences only insofar as they are part of a larger project in duration and scope which is receiving USIA funding from this competition. USIA-supported projects may include internships; study tours; short-term, non-technical training; and extended, intensive workshops taking place in the United States or overseas. The themes addressed in exchange programs must be of long-term importance rather than focused exclusively on current events or short-term issues. In every case, a substantial rationale must be presented as part of the proposal, one that clearly indicates the distinctive and important contribution of the overall project, including where applicable the expected yield of any associated conference. No funding is available exclusively to send U.S. citizens to conferences or conference-type seminars overseas; neither is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States. Projects that duplicate what is routinely carried out by private sector and/or public sector operations will not be considered. The Office of Citizen Exchanges strongly recommends that applicants consult with host country USIS posts, prior to submitting proposals.

Selection of Participants

All grant proposals should clearly describe the types of persons who will participate in the program as well as the process by which participants will be selected. It is recommended that programs in support of U.S. internships include letters tentatively committing host institutions to support the internships. In the selection of foreign participants, USIA and USIS posts retain the right to nominate all participants and to accept or deny participants recommended by grantee institutions. However, grantee institutions are often asked by USIA to suggest names of potential participants. The grantee institution will also provide the names of American participants and brief (two pages) biographical data on each American participant to the Office of Citizen Exchanges for information purposes. Priority will be given to foreign participants who have not previously travelled to the United States.

Additional Guidance

The Office of Citizen Exchanges offers the following additional guidance to prospective applicants:

1. Except where noted in the text, the Office of Citizen Exchanges encourages project proposals involving more than one country. Pertinent rationale which links countries in multi-county projects should be included in the submission. Single-country projects that are clearly defined and posses the potential for creating and strengthening continuing linkages between foreign and U.S. institutions are also welcome.

2. Proposals for bilateral programs are subject to review and comment by the USIS post in the relevant country, and pre-selected participants will also be subject to USIS post review.

3. Bilateral programs should clearly identify the counterpart organization and provide evidence of the organization's participation.

4. The Office of Citizen Exchanges will consider proposals for activities which take place exclusively in other countries when USIS posts are consulted in the design of the proposed program and in the choice of the most suitable venues for such programs.

5. Office of Citizen Exchanges grants are not given to support projects whose focus is limited to technical or vocational subjects, or for research projects, for publications funding, for student and/or teacher/faculty exchanges, for sports and/or sports related programs. Nor does this office provide scholarships or support for long-term (a semester or more) academic studies.

Funding

Proposals which request USIA funding of less than $135,000 and which include significant cost sharing will be deemed more competitive. Organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000. Applicants are invited to provide both an all-inclusive budget as well as separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding. While an all-inclusive budget must be provided with each proposal, separate component budgets are optional. Since USIA grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support. Cost sharing may be in the form of allowable direct or indirect costs.

The Recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, Attachment E-Cost Sharing and Matching and should be described in the proposal.

Eligible Costs

The following project costs are eligible for consideration for funding:

1. International and domestic air fares; visas; transit costs; ground transportation costs.

2. Per Diem. For the U.S. program, organizations have the option of using a flat $140/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S., the published Federal per diem rates must be used.

Note: U.S. escorting staff must use the published Federal per diem rates, not the flat rate.

3. Interpreters. If needed, interpreters for the U.S. program are provided by the U.S. State Department Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors who need interpretation. USIA grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $140/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

4. Book and cultural allowance. Participants are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a participant book allowance of $50. U.S. staff do not get these benefits.

5. Consultants. May be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

6. Room rental, which generally should not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop, and translate materials for participants.

8. One working meal per project. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner; excluding room rental. The number of invited guests may not exceed participants by more than a factor of two to one.

9. A return travel allowance of $70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. In most cases, USIA-funded delegates will be covered under the terms of a USIA-sponsored health insurance policy with the premium paid by USIA directly to the insurance company. For additional information on insurance coverage, contact the E/P program officer.

11. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package. Please refer to the Application Package for complete budget guidelines.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the Proposal Submission Instructions. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the budget and contract offices, as well the USIA geographic regional office and the USIS post overseas, where appropriate. Proposals may also be reviewed by the USIA's Office of General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

USIA will consider proposals based on their conformance with the objectives and considerations already stated in this RFP, as well as the following criteria:

1. Quality of Program Idea

Proposals should exhibit originality, substance, precision, and relevance to the Agency mission.

2. Program Planning

Detailed agenda and relevant work plan should demonstrate substance undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability To Achieve Program Objectives

Objectives should be reasonable, feasible, and flexible. Proposal should clearly demonstrate how the institution will meet the program objectives and plan.

4. Multiplier Effect

Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Value to U.S.—Partner Country Relations

Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner.

6. Institutional Capacity

Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goal.

7. Institution Reputation/Ability

Proposal should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-On Activities

Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA supported programs are not isolated events.

9. Evaluation Plan

Proposals should provide a plan for a thorough and objective evaluation of the program/project by the grantee institution.

10. Cost-Effectiveness

The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. Cost-Sharing

Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. Support of Diversity

Proposal should demonstrate the recipients' commitment to promoting the awareness and understanding of diversity throughout the program. This can be accomplished through documentation (such as a written statement or account) summarizing past and/or on-going activities and efforts that further the principle of diversity within both their organization and their activities.

Notice

The Office of Citizen Exchanges reserves the right to reduce, revise, or increase the grant award. The terms and conditions published in the Request for Proposal (RFP) are binding and may not be modified by any USIA representative. Explanatory information provided by USIA that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the government. Final awards cannot be made until funds have been fully appropriated by the Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about April 28, 1995. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: January 11, 1995.

Dell Pendergrast,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 95–1179 Filed 1–18–95; 8:45 am]

BILLING CODE 8230–01–M

Role of Business Associations in a Democratic Political System

ACTION: Notice—Request for proposals.

SUMMARY: The Office of Citizen Exchanges of the United States Information Agency's Bureau of Education and Cultural Affairs announces an open competition for an assistance award. Public or private non-profit organizations meeting the provisions described in IRS regulation 501(c)(3) may apply to develop a two-way exchange project to assist Ghanaian business and professional associations enhance their institutional capabilities,

enabling them to more effectively promote the interests of private enterprise in Ghana. The project should provide U.S.-based activities for approximately 8–10 members of Ghanaian associations. The project also should provide in-country workshops or consultancies to assist the participating organizations implement strategies to enhance their organizational structure and advocacy activities. The project should establish linkages between Ghanaian and U.S. business associations to promote dialogue on issues of common concern. The program should begin in summer/fall 1996. Consultation with the U.S. Information Service (USIS) post in Accra, Ghana, in the development of the project proposal is encouraged.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Announcement name and number: All communications with USIA concerning this announcement should refer to the above title and reference number E/P–95–45.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m., Washington, D.C. time on Friday, March 17, 1995. Faxed documents will not be accepted, nor will documents postmarked on March 17, 1995, but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: The Africa/Near East/South Asia Division of the Office of Citizen Exchanges, U.S. Information Agency, 301 4th Street, SW., Room 220, Washington, D.C. 20547, tel. 202–619–5319, fax 202–619–4350, Internet address STAYLOR@USIA.GOV, to request a Solicitation Package, which includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify USIA Program Officer Stephen Taylor on all inquiries and correspondence. Interested applicants should read the complete Federal Register announcement before addressing inquiries to the Office of Citizen Exchanges or submitting their proposals. Once the RFP deadline has passed, the Office of Citizen Exchanges may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

ADDRESSES: Applicants must follow all instructions provided in the Solicitation Package and send fully completed applications. Send the original and 14 copies to: U.S. Information Agency, Ref.: E/P–95–45, Office of Grants Management, E/XE, Room 336, 301 4th Street, SW., Washington, D.C. 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socioeconomic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview

Background: The government of Ghana has initiated policies liberalizing its economy and gradually has produced a climate more hospitable to the emergence and development of private sector associations. Entrepreneurs are free to form virtually any type of business association in pursuit of their interests. Historically, there have been three dominant associations—the Association of Ghana Industries (AGI); the Ghana National Chamber of Commerce (GNCC); and the Ghana Employers Association (GEA). These organizations developed during a period when Ghana maintained an essentially protected economy. AGI represented highly protected manufacturers. GNCC primarily represented the trading sector and GEA represented a mix of entrepreneurs from various sectors.

During the mid-1980s, the government of Ghana began to liberalize and open up the economy. New policies helped spur the formation of several producer associations representing exporters. Among about fifteen such organizations, five are particularly active: The Ghana Association of Women Entrepreneurs, the Ghana Federation of Business and Professional Women, the Horticultural Association of Ghana, the Association of Seafood Exporters and the Association of Assorted Foodstuffs. In addition to these groups, two important umbrella organizations have emerged over the course of the past two years. The Federation of Associations of Ghanaian Exporters lobbies Ghana's executive and legislative branches of government. The Private Enterprise Foundation is an umbrella group representing all private sector organizations. It also lobbies government and has organized forums for business leaders. Many of these organizations likely will gain strength and influence.

Program Overview: The Office of Citizen Exchanges (E/P) proposes development of a two-way exchange project designed to assist Ghanaian business associations develop strategies to increase their voice in the formulation of public policy affecting business growth and economic development. Participants would observe how the American business community promotes business interests, contributes to public debates and interacts with legislative bodies, federal agencies and community groups. This two-way exchange also would make available U.S. specialists to conduct in-country activities for Ghanaian business associations. The project should be designed to establish linkages between U.S. and Ghanaian counterpart organizations. The program should begin in summer/fall 1995.

Project Objectives

The project should be designed to:

—Examine the potential role of professional business associations in the context of a democratic political system. Using the U.S. experience as a model, the program would demonstrate how such groups promote their interests while operating within established social and legal norms.

—Examine strategies to contribute to public debate over the direction of business development.

—Analyze the organizational structure, financing resources and planning strategies of U.S. business groups and relevant political action committees.

—Examine networking and public relations strategies. Activities would help identify those areas of public concern most effectively addressed by business groups and develop

strategies appropriate to Ghanaian society that would address these concerns.
—Demonstrate the role of business associations in promoting ethical business practices. The program would analyze the concept of corporate responsibility and examine the activities of corporate internal consumer affairs units in addressing consumer needs.
—Analyze the role of government in promoting business ethics and stimulating business development.
—Establish linkages between Ghanaian and U.S. institutions to open a dialogue on key business issues affected by the evolving economic and political liberalization underway in Ghana.

Participants

The project should be designed for 8–10 leading members of Ghanaian business and professional organizations. USIS personnel in Ghana will select the participants from among the organizations named in the Background section above. Recommendations from the grantee institution are also welcome. For program activities in Ghana, the grantee institution will select the American presenters in consultation with USIA.

USIS offices will facilitate the issuance of visas for the Ghanaian participants and can help with the distribution of program-related materials in Ghana.

Programmatic Considerations

USIA will give careful consideration to proposals which demonstrate:

(1) in-depth, substantive knowledge of the structure, functions and activities of American business and professional organizations;

(2) first-hand connections with a variety of American organizations that represent business and professional interests in the formulation of public policy and the direction of private enterprise development;

(3) the capacity to organize and manage international exchange programs, including the handling of pre-departure arrangements, orientation activities, monitoring and problem-solving involved in such programs.

USIA is especially interested in multi-phase programs in which the phases build on one another and lay the groundwork for new and long-term relationships between American and African professionals. Proposals which are overly ambitious and those which are very general in nature will not be competitive. The Office of Citizen Exchanges does not award grants to support projects whose focus is limited to technical matters, or to support scholarly research projects, development of publications for dissemination in the United States, individual student exchanges, film festivals and exhibits. The Office of Citizen Exchange does not provide scholarships or support for long-term (one semester or more) academic studies. Competitions sponsored by other Bureau offices also are announced in the Federal Register and may have different application requirements as well as different objectives.

Program Suggestions

The proposed project should include at least one phase for Ghanaian participants in the United States and at least one phase for American specialists in Ghana. Programming elements might include in-country workshops or seminars led by American experts, specialized consultancies developed for Ghanaian organizations, a study tour in the United States for selected Ghanaian participants and U.S.-based professional attachments for Ghanaians. A planning visit overseas by the American organizer also could be considered if crucial to successful development and implementation of the program.

The project should include formats which maximize interaction between the Ghanaian participants and the program presenters. Participants should observe the full range of activities on the part of business and professional organizations. They should observe the interaction of such groups with public and private sector officials involved in formulating and implementing policies that affect private enterprise, such as business owners, trade unionists, legislators, federal regulators, local government officials and educators. The program design should provide adequate time for participants to meet individually with American professionals who have similar interests and specializations. While not required, the presenters' familiarity with private enterprise development in Ghana is desirable.

Program Responsibilities

The grantee institution's responsibilities include: selecting presenters, themes and topics for discussion; organizing a coherent progression of activities; providing any support materials; providing all travel arrangements, lodging and other logistical arrangements for the visiting Ghanaian participants and the U.S. presenters who travel to Ghana; and overseeing the project on a daily basis to achieve maximum program effectiveness. The grantee institution is responsible for coordinating plans and project implementation with E/P, USIS officers in Ghana, and Ghanaian collaborating institutions.

At the start of each phase, the grantee institution will conduct an orientation session and, at the conclusion, conduct participant evaluations. The institution will submit a report at the conclusion of each program phase, including a final program report summarizing the entire project and resulting organizational links. The institution must also submit a final financial report. To prepare the participants for their U.S. experience, E/P encourages the grantee organization to forward a set of preliminary materials which might include an introduction to the U.S. system of government, American notions of free enterprise, the practices of U.S. business and professional organizations and other background information about the project. E/P will ask the Ghanaian participants to prepare brief outlines describing their own particular interests in these areas. The grantee institution should brief the American presenters on the Ghanaian participants' backgrounds, interests and concerns.

Other Program Considerations

Consultation with USIS officers in Ghana in the development of the project proposal is encouraged. Letters of commitment from participating U.S. and Ghanaian institutions and individuals would enhance a proposal.

USIA also encourages the development of specialized written materials to enhance this professional development program. USIA is interested in organizations' ideas on how to ''reuse'' specialized materials by providing them to universities, libraries or other institutions for use by a larger audience. If not already available, glossaries of specialized terms might be developed. However, please note that, according to current USIA regulations, materials developed with USIA funds may not be distributed in the United States.

The grantee institution should maximize cost-sharing in all elements of the project and seek to stimulate U.S. private sector support, including from foundations and corporations.

All participants will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

Funding

Competition of USIA funding support is keen. Selection of a grantee institution is based on the substantive

nature of the program proposal; the applicant's professional capability to carry the program through to a successful conclusion; and cost effectiveness, including in-kind contributions and the ability to keep overhead costs at a minimum. USIA will consider funding up to approximately $100,000, but grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive line item budget for the entire program based on the specific guidance in the Solicitation Package. Applicants must provide a summary budget as well as a break-down reflecting both the administrative budget and the program budget. For further clarification, applicants may provide optional, separate sub-budgets for each program phase or activity in order to facilitate USIA decisions on funding. USIA will consider funding the following costs:

1. International and domestic air fares; visas; transit costs (e.g., airport fees); ground transportation costs.

2. Per diem: For foreign participants during activities in the United States, organizations have the option of using a flat rate of $140/day or the published Federal Travel Regulations (FTR) per diem rates for individual American cities.

Note: U.S. institutional staff must use the published FTR per diem rates, not the flat rate. For activities overseas, standard Federal Travel Regulations per diem rates must be used.

3. Escort-interpreters: Interpretation for U.S.-based programs is provided by the State Department's Language Services Division. Typically, delegations ranging from 8–12 participants require two simultaneous interpreters and one escort officer. Grant proposal budgets should contain a flat $140/day per diem rate for each State Department escort/interpreter, as well as home-program-home air fare of $400 per interpreter and any U.S. travel expenses during the program itself. Salary expenses are covered centrally and are not part of the applicant's budget proposal. USIA grants do not pay for foreign interpreters to accompany delegations during travel to or from their home country. Interpreters are not available for U.S.-based internship activities.

4. Book and cultural allowances: Participants are entitled to a one-time book allowance of $50 plus a cultural allowance of $150 per person during programs taking place in the United States. U.S. staff do not receive these benefits. Escort interpreters are reimbursed for actual cultural expenses up to $150.00.

5. Consultants: Consultants may be used to provide specialized expertise or to make presentations. Honoraria generally should not exceed $250/day. Subcontracting organizations may also be used, in which case the written contract(s) should be included in the proposal.

6. Materials development: Proposals may contain costs to purchase, develop and translate materials for participants. USIA reserves the rights to these materials for future use.

7. Room rentals, which generally should not exceed $250/day.

8. One working meal per project, for which per capita costs may not exceed $5–$8 for a lunch or $14–$20 for a dinner. The number of invited guests may not exceed the number of participants by more than a factor of two to one.

9. Return travel allowance: $70 for each participants which is to be used for incidental expenditures incurred during international travel.

10. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package.

E/P encourages cost-sharing, which maybe in the form of allowable direct or indirect costs. E/P would be especially interested in proposals which demonstrate a program vision which goes well beyond that which can be supported by the requested USIA grant and which would try to use a USIA grant to leverage additional funding from other sources to support elements of the broader program plan.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the Agency contracts office, as well as the USIA Office of African Affairs and the USIA post overseas, where appropriate. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Institutional Reputation and Ability

Applicant institutions should demonstrate their potential for excellence in program design and implementation and/or provide documentation of successful programs. If an applicant is a previous USIA grant recipient, responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts will be considered. Relevant substantive evaluations of previous projects may also be considered in this assessment.

2. Project Personnel

The Thematic and logistical expertise of project personnel should be relevant to the proposed program. Resumes or C.V.s should be summaries which are relevant to the specific proposal and no longer than two pages each.

3. Program Planning

A detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity.

4. Thematic Expertise

Proposal should demonstrate the organization's expertise in the subject area which promises an effective sharing of information.

5. Support of Diversity

Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity.

6. Cross-Cultural Sensitivity and Area Expertise

Evidence should be provided of sensitivity to historical, linguistic, religious, and other cross-cultural factors, as well as relevant knowledge of the target geographic area/country.

7. Ability To Achieve Program Objectives

Objectives should be realistic and feasible. The proposal should clearly demonstrate how the grantee institution will meet program objectives.

8. Multiplier Effect

Proposed programs should strengthen long-term mutual understanding and

contribute to maximum sharing of information and establishment of long-term institutional and individual ties.

9. Cost-Effectiveness

Overhead and direct administrative costs to USIA should be kept as low as possible. All other items proposed for USIA funding should be necessary and appropriate to achieve the program's objectives.

10. Cost-Sharing

Proposals should maximize cost-sharing through other private sector support as well as direct funding contributions and/or in-kind support from the prospective grantee institution and its partners.

11. Follow-On Activities

Proposals should provide a plan for continued exchange activity (without USIA support) which ensures that USIA-supported programs are not isolated events.

12. Project Evaluation

Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Grantees will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The needs of the program may require the award to be reduced, revised, or increased. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about June 16, 1995. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: January 11, 1995.

Dell Pendergrast,

Deputy Associate Director, Educational and Cultural Affairs.

[FR Doc. 95–1181 Filed 1–18–95; 8:45 am]

BILLING CODE 8230–01–M

Regulation of Broadcast Radio Frequencies (South Africa)

ACTION: Notice—Request for proposals.

SUMMARY: The Office of Citizen Exchanges of the United States Information Agency's Bureau of Education and Cultural Affairs announces an open competition for an assistance award. Public or private non-profit organizations meeting the provisions described in IRS regulation 501(c)(3) may apply to develop a two-way exchange project to assist South Africa's Independent Broadcasting Authority (IBA) to enhance its institutional capacity. The project should provide U.S.-based activities for approximately 6–8 IBA commissioners and senior staff to demonstrate U.S. policies and practices involved in the regulation of broadcasting. The project also should provide in-country consultancies to assist the IBA implement strategies aimed at enhancing its organizational structure and policy-making procedures. The program should begin in summer/fall 1995. Consultation with U.S. Information Service (USIS) posts in South Africa in the development of the project proposal is encouraged.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Announcement name and number: All communications with USIA concerning this announcement should refer to the above title and reference number E/P–95–38.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday, March 17, 1995. Faxed documents will not be accepted, nor will documents postmarked on March 17, 1995, but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: The Africa/Near East/South Asia Division of the Office of Citizen Exchanges, U.S. Information Agency, 301 4th Street, S.W., Room 220, Washington, D.C. 20547, tel. 202–619–5319, fax 202–619–4350, Internet address STAYLOR@USIA.GOV, to request a Solicitation Package, which includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify USIA Program Officer Stephen Taylor on all inquiries and correspondences. Interested applicants should read the complete Federal Register announcement before addressing inquiries to the Office of Citizen Exchanges or submitting their proposals. Once the RFP deadline has passed, the Office of Citizen Exchanges may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

ADDRESSES: Applicants must follow all instructions provided in the Solicitation Package and send fully completed applications. Send the original and 14 copies to: U.S. Information Agency, Ref.: E/P–95–38, Office of Grants Management, E/XE, Room 336, 301 4th Street, SW., Washington, DC 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a nonpolitical character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socioeconomic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview

Background

Prior to 1994, the only legal, unencoded broadcaster in the Republic of South Africa was the South African

Broadcasting Corporation (SABC), a state-owned national broadcaster with both commercial and public service responsibilities. Rather than provide a forum for the free and open discussion of national issues, the SABC came to serve as an advocate of government Apartheid policy.

Until recently, SABC was managing some 23 national, regional and local radio services and three television services. The SABC budget was approved by Parliament and supervised by the Ministry of Home Affairs, which, together with the Postmaster General, managed the airwaves.

Legislation adopted in 1993 created the Independent Broadcasting Authority (IBA), loosely modeled on the U.S. Federal Communications Commission (FCC), to publicly manage the radio frequency spectrum and institutionalize freedom of speech protections by shielding the broadcast media from direct political controls. The IBA consists of six commissioners and two co-chairpersons appointed in April 1994.

Program Overview

The Office of Citizen Exchanges (E/P) proposes development of a two-way exchange project designed to enhance the institutional capabilities of South Africa's Independent Broadcasting Authority. The project should assist the Authority to develop a plan to assure citizens' access to the airwaves in a manner consistent with democratic practices in public resource management. The project should bring South African participants to the United States to study U.S. regulation of the broadcast media, and send U.S. specialists to South Africa to provide on-site consultancies. While the program should cover regulations of all broadcast media, activities should focus on radio, which is South Africa's predominant broadcast medium. The program should begin in summer/fall 1995.

Project Objectives

The project should be designed to:

—Provide participants with a broad understanding of U.S. laws, regulations and policies relevant to the administration of broadcasting;

—Introduce participants to the operation of the Federal Communications Commission (FCC), including its administrative, technical and legal branches, and examine its relations with the three branches of the federal government and other public and private organizations;

—Study FCC policies affecting local control, ownership and management of broadcasting operations; guidelines promoting diversity of station ownership; policies affecting freedom of speech and programming; historic and contemporary public service requirements; the history of regulations promoting political fairness in broadcasting; free speech limits on broadcasters; ownership requirements; and licensing procedures;

—Examine major trends and developments in broadcasting technologies and related policy issues such as the implications of direct broadcasting from satellites; competition for limited broadcasting frequencies; the sale and leasing of frequencies; the funding of public broadcasting, including university and community-based operations; and management of cable television systems;

—Introduce participants to U.S. commercial and public broadcasting organizations, professional associations and public interest groups to study the impact of regulatory policies;

—Assist participants to identify specific objectives for enhancing the IBA's institutional capacity;

—Provide consultancies in South Africa aimed at assisting the IBA to enhance organizational structure, administrative practices and policy formulation which ensure public participation, transparency in decision making, and respect for the business integrity and free speech of broadcasters;

—Develop appropriate support materials to assist participant achieve their objectives relative to the IBA's instutitional capacity;

—Lay the groundwork for linkages between institutions in the United States and South Africa aimed at promoting regulatory policies consistent with constitutional free speech protections in South Africa and evolving technological trends.

Participants

The project should be designed for commissioners and senior staff members of South Africa's Independent Broadcasting Authority. The delegation during the U.S. phase of the project probably would total 6–8 participants. The delegation possibly who play role in formulating regulatory policy governing South Africa's airwaves. USIS personnel will select the South African participants, although recommendations from the grantee institution are welcome. For program phases in South Africa, the grantee institution will select the American presenters in consultation with USIA.

USIS offices will facilitate the issuance of visas for the South African participants and can help with the distribution of program-related materials in South Africa.

Programmatic Considerations

USIA will give careful consideration to proposals which demonstrate:

(1) In-depth, substantive knowledge of the historic evolution of U.S. policy relative to the regulation of radio and television broadcasting, as well as contemporary issues in the broadcasting field;

(2) First-hand connections with appropriate U.S. public and private sector organizations and institutions involved in the management of broadcast frequencies;

(3) The capacity to organize and manage international exchange programs, including the handling of pre-departure arrangements, orientation activities, oversight and problem-solving involved in such programs.

USIA is especially interested in multi-phase programs in which the phases build on one another and lay the groundwork for new and long-term relationships between American and South African professionals. Proposals which are overly ambitious and those which are very general in nature will not be competitive. The Office of Citizen Exchanges does not award grants to support projects whose focus is limited to technical matters, or to support scholarly research projects, development of publications for dissemination in the United States, individual student exchanges, film festivals or exhibits. The Office of Citizen Exchange does not provide scholarships or support for long-term (one semester or more) academic studies. Competitions sponsored by other Bureau offices also are announced in the Federal Register and may have different application requirements as well as different objectives.

Program Suggestions

The proposed project should include at least one phases for South African participants in the U.S. and at least one phase for American specialists in South Africa. Programming elements might include in-country workshops or seminars led by American experts, specialized American consultancies conducted in South Africa, a study tour in the U.S. for selected South African participants and U.S.-based professional attachments. A planning visit overseas by the American organizer can also be considered if crucial to successful

development and implementation of the program.

The project should include formats which maximize interaction between the South African participants and the program presenters. Participants should observe interaction between public and private sector officials involved in the formulation, implementation and evaluation of regulatory policy, such as legislators, regulators, stations managers, technicians, advertisers, interest group leaders and educators. The program design should provide adequate time for participants to meet individually with American professionals who have similar interests and specializations. While not required, the presenters' familiarity with broadcasting in South Africa is desirable.

Program Responsibilities

The grantee institution's responsibilities include: selecting presenters, themes and topics for discussion; organizing a coherent progression of activities; providing any support materials; providing all travel arrangements, lodging and other logistical arrangements for the South African participants and U.S. presenters who travel to South Africa; and overseeing the project on a daily basis to achieve maximum program effectiveness. The grantee institution is responsible for coordinating plans and project implementation with E/P, participating USIS posts, and any South African collaborating institutions.

At the start of each phase, the grantee institution will conduct an orientation session for the participants and, at the conclusion, conduct participant evaluations. The institution will submit a report at the completion of each program phase, including a final program report summarizing the entire project and resulting organizational links. The institution must also submit a final financial report. To prepare the participants for their U.S. experience, E/P encourages the grantee organization to forward a set of preliminary materials which might include an introduction to the U.S. system of government, the principles underlying U.S. regulation of broadcasting, the practices of U.S. broadcasters and other background information about the project. E/P will ask the South African participants to prepare brief outlines describing their own particular interests in these areas. The grantee institution should brief the American presenters on the South African participants' backgrounds, interests and concerns.

Other Program Considerations

Consutation with USIS posts in South Africa in the development of the project proposal is encouraged. Letters of commitment from participating U.S. institutions and individuals would enhance a proposal.

USIA also encourages the development of specialized written materials to enhance this professional development program. USIA is interested in organizations' ideas on how to ''reuse'' specialized materials by providing them to universities, libraries or other institutions for use by a larger audience. If not already available, glossaries of specialized terms might be developed. However, please note that, according to current USIA regulations, materials developed with USIA funds may not be distributed in the United States.

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Competition for USIA funding support is keen. Selection of a grantee institution is based on the substantive nature of the program proposal; the applicant's professional capability to carry the program through to a successful conclusion; and cost effectiveness, including in-kind contributions and the ability to keep overhead costs at a minimum. USIA will consider funding up to approximately $100,000, but grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comparative line item budget for the entire program based on the specific guidance in the Solicitation Package. Applicants must provide a summary budget as well as a break-down reflecting both the administrative budget and the program budget. For further clarification, applicants may provide optional, separate sub-budgets for each program phase or activity in order to facilitate USIA decisions on funding. USIA will consider funding the following costs:

1. International and domestic air fares; visas; transit costs (e.g., airport fees); ground transportation costs.

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3. Escort-interpreters: Interpretation for U.S.-based programs is provided by the State Department's Language Services Division. Typically, delegations ranging from 8–12 participants require two simultaneous interpreters and one escort officer. Grant proposal budgets should contain a flat $140/day per diem rate for each State Department escort/interpreter, as well as home-program-home air fare of $400 per interpreter and any U.S. travel expenses during the program itself. Salary expenses are covered centrally and are not part of the applicant's budget proposal. USIA grants do not pay for foreign interpreters to accompany delegations during travel to or from their home country. Interpreters are not available for U.S.-based internship activities.

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employees, benefits, and other direct and indirect costs per detailed instructions in the application package.

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Review Process

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Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

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Applicant institutions should demonstrate their potential for excellence in program design and implementation and/or provide documentation of successful programs. If an applicant is a previous USIA grant recipient, responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts will be considered. Relevant substantive evaluations of previous projects may also be considered in this assessment.

2. Project Personnel

The thematic and logistical expertise of project personnel should be relevant to the proposed program. Resumes or C.V.s should be summaries which are relevant to the specific proposal and no longer than two pages each.

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7. Ability To Achieve Program Objectives

Objectives should be realistic and feasible. The proposal should clearly demonstrate how the grantee institution will meet program objectives.

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Proposed programs should strengthen long-term mutual understanding and contribute to maximum sharing of information and establishment of long-term institutional and individual ties.

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Proposals should maximize cost-sharing through other private sector support as well as direct funding contributions and/or in-kind support from the prospective grantee institution and its partners.

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Proposals should provide a plan for continued exchange activity (without USIA support) which ensures that USIA-supported programs are not isolated events.

12. Project Evaluation

Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Grantees will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

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Notification

All applicants will be notified of the results of the review process on or about June 16, 1995. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: January 11, 1995.

Dell Pendergrast,

Deputy Associate Director, Educational and Cultural Affairs.

[FR Doc. 95–1182 Filed 1–18–95; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 12
Thursday, January 19, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: 60 FR 2625, January 10, 1995.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Tuesday, January 17, 1995.

CHANGES IN THE MEETING:

One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such closed item(s) was added: Proposals regarding conflicts of interest policies and financial disclosure forms for Federal Reserve Bank supervisory personnel. (This item was originally announced for a closed meeting on January 3, 1995.)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: January 17, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–1564 Filed 1–17–95; 3:38 pm]

BILLING CODE 6210–01–P

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, January 24, 1995 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting Will Be Closed to the Public

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, January 26, 1995 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinion 1994–33: Paul E. Sullivan on behalf of VITEL International Inc.
Advisory Opinion 1994–40: David S. Addington on behalf of the Alliance for American Leadership.
Administrative Matters

PERSONS TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 95–1548 Filed 1–17–95; 3:17 pm]

BILLING CODE 6715–01–M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

STATUS: Open.

MEETING: Meeting of the U.S. National Commission on Libraries and Information Science (NCLIS).

DATE AND TIME:

February 23, 1995—9 a.m. to 4:30 p.m.
February 24, 1995—8:30 a.m. to 3 p.m.

PLACE: Annapolis Marriott Hotel, 80 Compromise Street, Annapolis, MD.

MATTERS TO BE DISCUSSED:

Administrative matters:
Demonstrations by the Maryland State Department of Education and the Library of Congress on Libraries and the Information Superhighway;
Plans for the Library of Congress' Digital Library
Legislative and Executive Matters
- The federal role for libraries; planning for the reauthorization of LSCA
- Contract with America
- National Library of Education Advisory Task Force
- Impact of fourth-class library rate increaser
- Implementation of legislation passed by the Congress
- U.S. Postal Service Kiosks

NCLIS Reports
- NCLIS budgets for FY 1995 and 1996
- Report, Pre-White House Conference for Older Americans
- Library Statistics Program

NCLIS Programs and Plans for 1995–96
- Libraries and the Internet/NII: Developing Cost Assessment Models
- NCLIS statistical pocket guide
- Analysis of WHCLIS 1979 and 1991 Recommendations

Old Business
New Business
- Committee reports

To request further information or to make special arrangements for physically challenged persons, contact Barbara Whiteleather (202–606–9200) no later than one week in advance of the meeting.

Dated; January 13, 1995.

Peter R. Young,

NCLIS Executive Director.

[FR Doc. 95–1451 Filed 1–17–95; 1:04 pm]

BILLING CODE 7527–01–M

UNITED STATES POSTAL SERVICE

Notice of Vote to Close Meeting

By telephone vote on January 12 and 13, 1995, a majority of the members contacted and voting, the Board of Governors of the United States Postal Service voted to add to the agenda of its meeting closed to public observation on February 6, 1995, in Washington, D.C. (see 59 FR 65126, December 16, 1994), consideration of an interim funding request for the Chicago, Illinois, Processing & Distribution Center.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Dyhrkopp, Mackie, Pace and Winters; Postmaster General Runyon, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Elcano.

The Board determined that pursuant to section 552b(c)(9)(B) of Title 5, United States Code, and section 7.3(i) of Title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information, the premature disclosure of which would significantly frustrate proposed procurement actions. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(9)(B) of Title 5, United States Code and section 7.3(i) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the

Secretary of the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 95–1422 Filed 1–17–95; 10;03 am]

BILLING CODE 7710–12–M

Corrections

Federal Register
Vol. 60, No. 12
Thursday, January 19, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

LIBRARY OF CONGRESS

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37 CFR Part 201

[Docket No. RM 89-2A]

Cable Compulsory License: Notice of Inquiry Regarding Merger of Cable Systems and Individual Pricing of Broadcast Signals

Correction

In proposed rule document 95–439 beginning on page 2365, in the issue of Monday, January 9, 1995, make the following correction:

On page 2365, in the second column, in the **DATES** section, ''February 8, 1995'' is corrected to read ''March 27, 1995''.

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 227

[Docket No. 940822-4222 I.D. 072594B]

Endangered and Threatened Species; Status of Snake River Spring/Summer Chinook Salmon and Snake River Fall Chinook Salmon

Correction

In emergency interim rule document 94–20322 beginning on page 42529 in the issue of Thursday, August 18, l994, make the following correction:

On the same page, in the second column, under **EFFECTIVE DATE:**, in the last line, ''August 18, 1994 to May 26, 1995.'' should read ''August 18, 1994 to April 17, 1995.''

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products; Representative Average Unit Costs of Energy

Correction

In notice document 95–236 beginning on page 1773, in the issue of Thursday, January 5, 1995, make the following correction:

On page 1773, in the second column, under **EFFECTIVE DATE:**, in the fourth line, after the word ''effective'' insert ''February 6, 1995''.

BILLING CODE 1505–01–D

GENERAL SERVICES ADMINISTRATION

Board of Contract Appeals

48 CFR Part 6101

Rules of Procedure of the General Services Administration Board of Contract Appeals

Correction

In Proposed Rule document 94–29694 beginning on page 61861 in the issue of Friday, December 2, 1994 make the following corrections:

On page 61862, in the first column, in the first complete paragraph:

(a) In the second line ''$100,000'' should read''$10,000''.

(b) In the fifth line ''$10,000'' should read ''$100,000''.

BILLING CODE 1505–01–D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 315

RIN 3206-AG55

Career and Career-Conditional Employment

Correction

In rule document 94–32330 beginning on page 68104, in the issue of Friday, December 30, 1994, make the following correction:

On page 68104, in the third column, under the heading ''List of Subjects in 5 CFR Part 315'', after the sentence ''Government employees.'', the signature line was omitted and should have appeared as follows:

U.S. Office of Personnel Management.

James B. King,

Director.

BILLING CODE 1505–01–D

Federal Register

Thursday
January 19, 1995

Part II

Department of Labor

Employment and Training Administration
Wage and Hour Division

20 CFR Part 655
29 CFR Part 506

Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports; Interim Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AB03

Wage and Hour Division

29 CFR Part 506

RIN 1215–AA90

Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

AGENCIES: Employment and Training Administration and Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: The Employment and Training Administration (ETA) and the Employment Standards Administration (ESA) of the Department of Labor (DOL or Department) are promulgating regulations to implement amendments to existing regulations governing the filing and enforcement of attestations by employers seeking to use alien crewmembers to perform longshore work in the U.S. The amendments relate to employers' use of alien crewmembers to perform longshore work at locations in the State of Alaska. Under the Immigration and Nationality Act employers, in certain circumstances, are required to submit these attestations to DOL in order to be allowed by the Immigration and Naturalization Service (INS) to use alien crewmembers to perform specified longshore activities at locations in the State of Alaska. The attestation process is administered by ETA, while complaints and investigations regarding the attestations are handled by ESA.

DATES: *Effective Date:* The interim final rule promulgated in this document is effective on February 21, 1995.

Comments: Written comments on the interim final rule are invited from interested parties. Comments shall be submitted by March 20, 1995.

ADDRESSES: Submit comments to: Doug Ross, Assistant Secretary, Employment and Training Administration, Department of Labor, Room N–4456, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: On 20 CFR part 655, subpart F, and 29 CFR part 506, subpart F, contact Flora T. Richardson, Chief, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N–4456, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 219–5263 (this is not a toll-free number).

On 20 CFR part 655, subpart G, and 29 CFR part 506, subpart G, contact Solomon Sugarman, Chief, Farm Labor Programs, Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 219–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The information collection requirements of the Form ETA 9033–A under the Alaska exception and contained in this rule have been submitted to the Office of Management and Budget (OMB) for clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control No. 1205–0352. The information collection requirements of the Form ETA 9033 under the prevailing practice exception, assigned OMB Control No. 1205–0309, remain unchanged by this rulemaking. The Form ETA 9033 was published in the Federal Register with the final rule to implement the prevailing practice exception on September 8, 1992 (57 FR 40966).

The Employment and Training Administration estimates that employers will be submitting up to 350 attestations per year under the Alaska exception. The public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing information/data sources, gathering and maintaining the information/data needed, and completing and reviewing the attestation. It is likely that the burden will be considerably less in the second and subsequent years in which an employer submits an attestation.

Written comments on the collection of information requirements should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment and Training Administration, Washington, DC 20503.

II. Background

The Coast Guard Authorization Act of 1993, Pub. L. 103–206, 107 Stat. 2419 (Coast Guard Act), was enacted on December 20, 1993. Among other things, the Coast Guard Act amended section 258 of the Immigration and Nationality Act (INA) (8 U.S.C. 1101 *et seq.*) which places limitations on the performance of longshore work by alien crewmembers in U.S. ports.

The loading and unloading of vessels had traditionally been performed by U.S. longshore workers. However, until passage of the Immigration Act of 1990 (IMMACT 90), Pub. L. 101–649, 104 Stat. 4978, (November 29, 1990), alien crewmembers had also been allowed by Immigration and Naturalization Service (INS) regulation to do this kind of work in U.S. ports, because longshore work was considered to be within the scope of permitted employment for alien crewmembers. The IMMACT 90 limited this practice in order to provide greater protection to U.S. longshore workers.

Prior to the Coast Guard Act's enactment, section 258 of the INA prohibited alien crewmembers admitted with D-visas from performing longshore work except in four specific instances: (a) Where the vessel's country of registration does not prohibit U.S. crewmembers from performing longshore work in that country's ports and nationals of a country which does not prohibit U.S. crewmembers from performing longshore work in that country's ports hold a majority of the ownership interest in the vessel; (b) where there is in effect in a local port one or more collective bargaining agreement(s), each covering at least 30 percent of the longshore workers at a particular port and each permitting the activity to be performed by alien crewmembers; (c) where there is no collective bargaining agreement covering at least 30 percent of the longshore workers and an attestation has been filed with the Department which states that the use of alien crewmembers to perform longshore work is permitted under the prevailing practice of the port, that the use of alien crewmembers is not during a strike or lockout, that such use is not intended or designed to influence the election of a collective bargaining representative, and that notice has been provided to longshore workers at the port; and (d) where the activity is performed with the use of automated self-unloading conveyor belts or vacuum-actuated systems; *provided that,* the Secretary of Labor (Secretary) has not found that an attestation is required because it was not the prevailing practice to utilize alien crewmembers to perform the activity or because the activity was performed during a strike or lockout or in order to influence the election of a collective bargaining representative. For this purpose, the term ''longshore work''

does not include the loading or unloading of hazardous cargo, as determined by the Secretary of Transportation, for safety and environmental protection and no attestations were or are necessary for the loading and unloading of such cargo.

The Department published final regulations in the Federal Register on September 8, 1992, (57 FR 40966) to implement the prevailing practice exception under IMMACT 90. The fishing industry and the carriers worked together to comply with the law by filing the necessary attestations to qualify under the prevailing practice exception. The International Longshore and Warehousemen's Union responded to protect the jurisdiction of U.S. longshore workers by filing complaints pursuant to the attestations and seeking cease and desist orders to halt the performance of longshore work by the carrier's alien crewmembers.

The basic problem was that the prevailing practice exception was apparently designed for established port areas. A lack of flexibility in the remote areas of Alaska where the longshore work needed to be performed, in some cases, prevented carriers from complying with Departmental regulations. As a result, even where there were no U.S. longshore workers available for the particular employment, employers in some of these remote areas were prohibited from performing the necessary longshore work, resulting in potential adverse impacts on the Alaskan fishing industry including the loss of American jobs. In order to remedy the situation, Congress consulted with representatives of the longshoremen's unions and the carriers and enacted special provisions recognizing the unique character of Alaskan ports.

The Coast Guard Act amended the INA by establishing a new Alaska exception to the general prohibition on the performance of longshore work by alien crewmembers in U.S. ports. The Alaska exception provides that the prohibition does not apply where the longshore work is to be performed at a particular location in the State of Alaska and an attestation with accompanying documentation has been filed by the employer with the Department of Labor. The INA provides, however, that longshore work consisting of the use of an automated self-unloading conveyor belt or vacuum-actuated system on a vessel shall continue to be governed by section 258(c) of the INA (8 U.S.C. 1288(c)), even at locations in the State of Alaska. If, however, it is determined that an attestation is required for longshore work at locations in the State of Alaska consisting of the use of automated equipment, *i.e.*, because the Administrator has determined, pursuant to a complaint, that it is not the prevailing practice to use alien crewmembers to perform the longshore activity(ies) through the use of the automated equipment, or was during a strike or lockout or intended to influence an election of a bargaining representative for workers in the local port, or if the Administrator issues a cease and desist order against use of the automated equipment without such attestation, the required attestation shall be filed by the employer under the Alaska exception and not under the prevailing practice exception. The amended INA provides that the prevailing practice exception no longer applies in case of longshore work to be performed at a particular location in the State of Alaska. As a result, U.S. ports in the State of Alaska which were previously listed in Appendix A, ''U.S. Seaports,'' have been removed from the Appendix in this interim final rule.

The Alaska exception is intended to provide a preference for hiring United States longshoremen over the employer's alien crewmembers. The employer must attest that, before using alien crewmen to perform the activity specified in the attestation, the employer will make a bona fide request for and employ United States longshore workers who are qualified and available in sufficient numbers from contract stevedoring companies and private dock operators. The employer must also provide notice of filing the attestation to such contract stevedoring companies and private dock operators, and to labor organizations recognized as exclusive bargaining representatives of United States longshore workers. Finally, the employer must attest that the use of alien crewmembers to perform longshore work is not intended or designed to influence the election of a bargaining representative for workers in the State of Alaska.

The Coast Guard Act provides that the Secretary of Labor shall prescribe such regulations as may be necessary to carry out the amendments to the INA. The INA further provides that attestations previously filed pursuant to the prevailing practice exception at section 258(c) of the INA (8 U.S.C. 1288(c)) would not expire at the expiration of their respective validity periods but would remain valid until 60 days after the date of issuance of final regulations by the Secretary. Absent a final rule for attestations under this program, employers are precluded from using alien crewmembers for longshore activity at a particular location in the State of Alaska unless an employer had a valid attestation for the location on file with ETA on the date of the Act's enactment. Thus, even where there are no qualified United States longshore workers available at a particular location in the State of Alaska, such an employer is prohibited from utilizing alien crewmembers to perform the necessary longshore work. This program affects a limited class of individuals and entities in Alaska. The Department consulted with representatives of all relevant parties in the development of this interim final rule and, for good cause, has determined that issuance of a proposed rule is unnecessary. 5 U.S.C. 553(b)(B).

Further, there is ongoing longshore work being performed off the coast of Alaska in connection with the fishing industry. Since delay in the issuance of an interim final rule precludes employers from filing attestations in Alaska in order to use the ''Alaska exception'', such employers may be encouraged by economic exigencies to utilize foreign crewmembers in longshore work illegally or to reflag their vessels to qualify for the reciprocity exception for vessels under the flags of countries which permit U.S. crewmembers to perform longshore work. Either of these actions by shippers would diminish employment opportunities for Alaskan stevedores, contrary to the purposes of the Act. Indeed, DOL has received information that further delay in implementing the Alaska exception could adversely impact the employment opportunities for Alaskan workers seeking longshore work. The Department, for good cause, has determined that this potential harm makes it impracticable and contrary to the public interest to delay implementation by publishing the rule as a proposed rule. 5 U.S.C. 553(b)(B).

Nevertheless, the Department is very interested in receiving comments on the interim final rule. These comments will be considered in the development of a final rule.

III. Attestation Process and Requirements

The regulations for the attestation program for employers using alien crewmembers for longshore work in the United States are published at 20 CFR part 655, subparts F and G, and 29 CFR part 506, subparts F and G, 57 FR 40966 (September 8, 1992).

A. When and Where to File

The regulations require that, to be acceptable, any attestation under the Alaska exception must be filed with ETA at least 30 days prior to the first

performance of longshore activity by alien crewmembers, or anytime up to 24 hours before the first performance of the activity if the delay could not have been reasonably anticipated. An attestation must be filed only once per year for locations at which alien crewmembers will be used. Therefore, the 30-day filing requirement applies only to the first performance of longshore work after the attestation is filed. Subsequent arrivals to the same location in the State of Alaska in the same year do not require that an additional attestation be filed.

Under the prevailing practice exception, the regulations require that a separate attestation be filed for each port at which the employer intends to use alien crewmembers to perform longshore work. The Department has determined that, under the Alaska exception, it is appropriate to accept attestations which contain multiple locations. An attestation must be filed by each individual employer but may apply to multiple vessels and multiple locations within the State of Alaska. For other States, the prevailing practice exception is port-specific and the employer is required to attest that there is no collective bargaining agreement *in the port* covering at least 30 percent of the longshore workers, and that it is the prevailing practice *in the port* for alien crewmembers to perform longshore work. There is no such port-specific or location-specific attestation element or other provision under the Alaska exception.

The Department requires that crewmember attestations for locations in the State of Alaska be submitted to and accepted by the Employment and Training Administration (ETA) regional office in Seattle, Washington. The address of the Seattle regional office is listed in the instructions for completing the Form ETA 9033–A.

ETA shall make available for public examination in Washington, DC, a list of employers which have filed attestations, and for each such employer, a copy of the employer's attestation and accompanying documentation in a timely manner after the acceptance of the attestation.

B. Acceptance for Filing

In accepting an attestation for filing, the regulations require that the application be filed with ETA at least 30 days before the first performance of the longshore activity (or anytime up to 24 hours before the first performance of the activity, upon a showing that the employer could not have reasonably anticipated the need to file an attestation for that location at that time). The term ''could not have reasonably anticipated'' is intended to be a broader and more flexible standard than under the prevailing practice exception, which permits late filing only in the event of an ''unanticipated emergency.'' Depending on the particular circumstances, delays occasioned by adverse weather conditions, changes in commercial requirements, changes in fish migration patterns, or other unforeseen circumstances may be sufficient to file less than 30 days in advance.

The regulations provide that the Department review an attestation only to ensure that it is completed properly, that it is accompanied by the required documentation specified in the regulations, and that the documentation is not, on its face, inconsistent with the attestation.

Level of Federal Review of Attestations

The Department has determined that the general approach to its review of employer attestations under the prevailing practice exception shall apply to attestations filed under the Alaska exception. The Department will review an attestation to ensure that it has been filed at least 30 days prior to the first performance of the longshore activity (or anytime up to 24 hours before the first performance of the activity, upon a showing that the employer could not have reasonably anticipated the need to file an attestation for that location at that time), that it is completed properly, that it has the appropriate accompanying documentation, and that the documentation is not, on its face, inconsistent with the attestation. In addition, the Department will review attestations to determine the following: (1) Whether the Administrator, Wage and Hour Division, DOL, has advised ETA that it has issued a cease and desist order currently in effect that would affect the attesting employer and particular location; (2) whether the Administrator has advised ETA of a determination that an employer has misrepresented or failed to comply with an attestation previously submitted and accepted for filing, requiring the Attorney General to bar the employer from entry to any U.S. port for up to one year; and (3) whether the Administrator has advised ETA that the employer has failed to comply with any penalty or remedy assessed.

Appeals Process

The regulations do not include an administrative appeal process for attestations during the filing phase under the Alaska exception. When an attestation is returned because it is untimely, improperly completed, or lacking proper documentation, an employer may resubmit another attestation to the Department. Attestations which have been accepted by ETA may be objected to by an aggrieved party through the complaint process in subpart G, and procedures for investigation, hearing, and appeal are provided therein. The Department believes that this approach is consistent with the statute's intent for a streamlined attestation filing process and a complaint-driven enforcement system for the statute's requirements.

C. Attestation Elements

Bona-fide Request for United States Longshore Workers

An employer or its agent filing an attestation under the Alaska exception must attest that it will make a bona fide request for dispatch of United States longshore workers who, by industry standards in the State of Alaska, including safety considerations, are qualified and available in sufficient numbers to perform the longshore activity at the particular time and location. Such requests must be directed to contract stevedoring companies and operators of private docks at which the employer intends to use longshore workers. Wherever two or more contract stevedoring companies have signed a joint collective bargaining agreement with a single qualified labor organization, the employer need request longshore workers from only one of such contract stevedoring companies. Qualified labor organizations are those which have been recognized as exclusive bargaining representatives of United States longshore workers within the meaning of the National Labor Relations Act (29 U.S.C. 141 *et seq.*) and which make available or intend to make available longshore workers to the particular location where the longshore work is to be performed. An employer is not required to request dispatch of United States longshore workers from contract stevedoring companies or private dock operators which do not meet the requirements of section 32 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 932) or, in the case of contract stevedoring companies, which are not licensed to do business in the State of Alaska. Evidence of coverage is a copy of the DOL Office of Workers' Compensation Programs (OWCP) Certificate of Compliance, which is maintained by the contract stevedoring company or private dock operator. Further, a request for dispatch from a private dock operator

need only be made for longshore work to be performed at that dock.

Employers are not required to request dispatch of United States longshore workers from any party which has notified the employer in writing that it does not intend to dispatch workers to the location at which longshore work is to be performed. If a party that has provided such notice subsequently informs the employer in writing that it is prepared to provide workers, the employer's obligations to that party to request dispatch of, and employ qualified United States longshore workers made available in sufficient numbers, recommence 60 days from the employer's receipt of the notice.

Employment of United States Longshore Workers

An employer or its agent must attest that it will employ all United States longshore workers dispatched in response to a request made under the first attestation element who are qualified and available in sufficient numbers and who are needed to perform the longshore activity at the particular time and location attested to.

This attestation element also specifies that employers will not be required to hire less than full work units of United States longshore workers nor to provide overnight accommodations for the workers. The regulations provide that ''full work unit'' means the full complement of longshore workers needed to perform the longshore activity, as determined by industry standards in the State of Alaska, including safety considerations. Where the makeup of a full work unit is covered by one or more collective bargaining agreements in effect at the time and location where longshore work is to be performed, the provisions of such agreements shall be deemed to be in conformance with industry standards in the State of Alaska. This element also states the conditions under which employers will be required to provide transportation from the point of embarkation to the vessel on which longshore work is to be performed. Specifically, there is a thirty-minute travel time limit and a five-mile travel distance limit except in Klawock/Craig and Wide Bay, Alaska, where, due to the remoteness of these areas, the travel limits are extended to forty-five minutes and seven and one-half miles, respectively. Further, an employer is not required to provide transportation, even if the vessel is within the specified time and distance limitations from the point of embarkation, unless surface transportation is available and such transportation may be safely accomplished. If a vessel where longshore work is to be performed is beyond the specified time and distance limitations from the point of embarkation, the employer is still obligated to hire any qualified U.S. longshore worker who is capable of getting to the vessel where the longshore work is to be performed at his or her own expense, even though the specified time and/or distance limitations are exceeded, but is not required to provide such transportation nor reimburse the worker for expenses incurred in getting to and from the vessel.

Election

An employer filing an attestation under the Alaska exception must attest that the use of alien crewmembers to perform longshore activities will not be intended or designed to influence an election of a bargaining representative for workers in the State of Alaska.

Notice

Lastly, an employer of alien crewmembers must attest that at the time of filing the attestation, notice of the filing has been provided to: (1) Labor organizations which have been recognized as exclusive bargaining representatives of United States longshore workers within the meaning of the National Labor Relations Act (29 U.S.C. 141 *et seq.*) and which make available or intend to make available workers to the locations where the employer is attesting that the longshore work is to be performed; (2) contract stevedoring companies which are licensed to do business in the State of Alaska, meet the requirements of section 32 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 932), and which employ or intend to employ United States longshore workers at those locations; and (3) operators of private docks at which the employer intends to use longshore workers. The operators to whom provision of notice is required shall also meet the requirements of section 32 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 932).

The required notices shall include a copy of the Form ETA 9033–A, shall state that the attestation with accompanying documentation has been filed and is available at the National office of ETA for review by interested parties, and shall explain where complaints can be filed with respect to employer attestations. Further, in the required notice, the employer shall request a copy of the Certificate of Compliance issued by the district director of the Office of Workers' Compensation Programs under section 37 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 932) from contract stevedoring companies and private dock operators. The employer's obligations to request dispatch of and employ qualified United States longshore workers from any party shall commence upon receipt of the Certificate of Compliance.

Finally, the Department periodically shall publish in the Federal Register a list of employers who have submitted attestations under the Alaska exception.

D. Automated Vessel Exception

The INA provides that longshore work consisting of the use of an automated self-unloading conveyor belt or vacuum-actuated system on a vessel shall continue to be governed by the prevailing practice exception and Departmental regulations thereunder at 20 CFR 655.520 and 29 CFR 506.520. If, however, it is determined that an attestation is required for longshore work consisting of the use of automated equipment, *i.e.*, because the Administrator has determined, pursuant to a complaint, that it is not the prevailing practice to use alien crewmembers to perform the longshore activity(ies) through the use of the automated equipment, or was during a strike or lockout or intended to influence an election of a bargaining representative for workers in the local port, or if the Administrator issues a cease and desist order against use of the automated equipment without such attestation, the required attestation shall be filed by the employer under the Alaska exception and not under the prevailing practice exception. The amended INA provides that the prevailing practice exception no longer applies in the case of longshore work to be performed at a particular location in the State of Alaska.

IV. Complaints, Investigations, and Dispositions

The INA provides that the Secretary shall establish complaint, investigation, and hearing procedures and authorizes the Secretary to issue cease and desist orders against employers. The Secretary's enforcement responsibilities are assigned to the Administrator, Wage and Hour Division, of the Department's Employment Standards Administration (ESA).

A. Complaint, Investigation, and Hearing

The INA provides that the existing process for the receipt, investigation, and disposition of complaints at section 258(c)(4) of the INA shall apply to the use of alien crewmembers to perform

longshore work at locations in the State of Alaska. Therefore, enforcement of attestations filed under the Alaska exception will be conducted in accordance with regulations currently in place for attestations filed under the prevailing practice exception.

Section 258(c)(4) of the INA requires that the Secretary establish a system to conduct investigations where a complaint presents there is reasonable cause to believe that an attesting employer failed to meet a condition attested to or misrepresented a material fact in its attestation, or that a non-attesting employer claiming the automated vessel exception was not qualified for the exception because the performance of the associated longshore activity does not prevail in the port. The regulations provide that the Wage and Hour Administrator may conduct investigations of potential violations of the law only pursuant to a complaint. The investigative process is to be completed and a determination issued in a 180-day period, or a longer period for good cause shown. Any aggrieved person may file a complaint.

The regulations provide that, in investigating an attesting employer, the Administrator shall consider the employer's statutory burden to present and retain facts and evidence to show the matters attested to. The regulations also require that the employer cooperate in the investigation and take no retaliatory action against persons who file complaints, assist in the investigation, or participate in the administrative proceedings.

B. Administrative Law Judge Hearing and Discretionary Review by the Secretary

Section 258(c)(4)(D) of the INA requires that the Secretary provide interested parties an opportunity for a hearing within 60 days of the date of the investigative determination. Because of this compressed timeframe, the regulations require that a request for hearing be filed directly with the Chief Administrative Law Judge no later than 15 days from the date of the Administrator's determination. Further, the regulations incorporate the statutory imposition of the burden of proof on the attesting employer to establish the truth of the attestation elements.

An opportunity for discretionary review by the Secretary is afforded by the regulations, with short deadlines in accordance with the statutory intent for expedited dispositions. Any interested party may request such review, and the Secretary shall determine what matters, if any, will be reviewed.

C. Cease and Desist Order

Section 258(c)(4)(C) of the INA authorizes the Secretary, at the request of a complainant, to issue a cease and desist order against an attesting employer or against a non-attesting employer claiming the automated vessel exception. The complainant's request may be made when the Secretary has determined there is reasonable cause to conduct an investigation. The INA specifies that, if a complainant requests such an order, the employer will be notified and given 14 days within which to respond. The Secretary is then required to determine whether the preponderance of the evidence submitted supports the complainant's position and, if it does, to order that the employer cease and desist the activity(ies) at issue. The order remains in effect throughout the hearing process for the attesting employer; for the non-attesting employer claiming the automated vessel exception, the order remains in effect throughout the hearing process unless ETA accepts for filing an attestation from that employer for the activity and location which the cease and desist order affects.

The regulations provide that the complainant who desires a cease and desist order must submit two complete copies of the request and the evidence to substantiate the allegations (the second copy of the request will be provided to the employer). The Administrator's notice to the employer shall include copies of the complaint, the cease and desist order request and supporting evidence, and any other pertinent evidence from an investigation of the same or a closely related matter which the Administrator incorporates into the record. The employer, thus, will be fully informed as to the allegations and evidence. The Administrator's notice also shall specify that, during the 14-day response period specified by the INA, the Administrator will provide, at the employer's request, an opportunity for a meeting with a Wage and Hour Division official to give the employer's views on the evidence and issues. This meeting shall be informal, shall not be subject to any procedural rules, and shall include the complainant if the complainant so desires.

The regulations specify that the cease and desist order will remain in effect unless and until the Administrator withdraws the order on the ground that the employer's position is determined to have been correct or a final determination is made which results in resolution of the matter under investigation, or—in the case of the automated vessel exception—an attestation relating to the longshore activity is accepted for filing by ETA.

A complainant's request for a cease and desist order under the Alaska exception shall specify the location(s) at issue. The regulations provide that the Secretary is required to determine whether the preponderance of the evidence submitted supports the complainant's position and, if it does, to order that the employer cease and desist the activity(ies) at the location(s) at issue. Since an attestation under the Alaska exception may be valid for multiple locations, a cease and desist order pertaining to a particular location or locations shall not prejudice the validity of the attestation with respect to the performance of longshore activities which are covered by the attestation, but which are not at issue under the cease and desist order.

D. Penalties

A violation of section 258 of the INA or the regulations thereunder by an attesting employer may result in the imposition of administrative remedy(ies), such as a civil money penalty not to exceed $5,000 per alien crewmember illegally employed. Upon notice of the violation(s), the Attorney General thereafter shall not permit the vessels owned or chartered by the employer to enter any port of the U.S. during a period of up to one year. Additionally, ETA will be notified and shall thereafter not accept any attestation from the employer for any activity(ies) at any U.S. port for one year (or for a shorter period, if such period is specified by INS).

Upon the Department's final determination that an employer improperly claimed the automated vessel exemption, the Attorney General will be notified and shall thereafter require that, before using alien crewmembers, the employer must have on file with ETA an attestation for the activity(ies) and the port at issue. For locations in the State of Alaska such an attestation shall be made under the Alaska exception on Form ETA 9033–A. For other states, the attestation shall be made under the prevailing practice exception on Form ETA 9033.

V. Enforcement Matters

A. Clarification of Judicial Review

To ensure that the regulation comports with recent supreme court caselaw, § _____.650 of the rule has been amended to provide that a party may not seek judicial review of an administrative law judge's decision until such party has exhausted all administrative remedies.

B. Debarment Timing (Notice to Attorney General)

The statute requires that the Secretary notify the Attorney General (AG) of an employer's violation(s). Pursuant to § _____.665(b) of the Interim Final rule, the Administrator is required to notify the AG and ETA of the final determination of a violation by an attesting employer or of the ineligibility of an employer for the automated vessel exception, upon the earliest of the following events:

(1) Where the Administrator determines that there is a basis for a finding of violation by an attesting employer or a finding of nonapplicability of the automated vessel exception, and no timely request for hearing is made pursuant to § _____.630 of this part;

(2) Where, after a hearing, the administrative law judge issues a decision and order finding a violation by an attesting employer or finding inapplicable the automated vessel exception; or

(3) Where the administrative law judge finds that there was no violation by an attesting employer or that the automated vessel exception does apply, and the Secretary, upon review, issues a decision pursuant to § _____.655 of this part, holding that a violation was committed by an attesting employer or holding that the automated vessel exception does not apply.

This regulatory construct creates a situation where the Administrator notifies the AG of a violation upon a finding of a violation or upon a finding that the automated vessel exception does not apply by an ALJ, even though such finding subsequently may be appealed to the Secretary and eventually overturned. An attesting employer thus could be debarred after a finding of violation by an ALJ, serve part or all of the debarment period, and subsequently be found by the Secretary not to have committed a violation. Similarly, if the ALJ finds that the employer is ineligible for the automated vessel exception, the employer could be required not to use alien crewmembers to perform longshore activities at the specified port without first filing an attestation with ETA, and subsequently be found to be eligible for the automated vessel exception by the Secretary.

To correct this anomaly, § _____.665(b) has been amended to require notification to the AG after a finding of a violation or a finding of nonapplicability of the automated vessel exception by an ALJ only under the following circumstances: (a) where there is no appeal from the ALJ's finding to the Secretary; (b) where, upon appeal, the Secretary declines to review the ALJ's finding; and (c) where, upon review, the Secretary affirms the ALJ's finding.

VI. Summary

The Department welcomes comments on these and any other issues addressed in the regulations and on any issues not addressed that commenters believe need to be addressed.

Regulatory Impact and Administrative Procedure

E.O. 12866:

In accordance with Executive Order 12866, the Department of Labor has determined that this is not a significant regulatory action as defined in section 3(f) of the Order.

Regulatory Flexibility Act:

The Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the rule does not have a significant economic impact on a substantial number of small entities.

Nevertheless, interested parties are requested to submit, as part of their comments on this rule, information on the potential economic impact of the rule.

Absent a final rule for attestations under this program, employers are precluded from using alien crewmembers for longshore activity at a particular location in the State of Alaska unless the employer had a valid attestation for the location on file with ETA on the date of the Coast Guard Act's enactment. This program affects a limited class of individuals and entities in Alaska. The Department consulted with representatives of all relevant parties in the development of this interim final rule and, for good cause, has determined that issuance of a proposed rule is unnecessary. 5 U.S.C. 553(b)(B).

Further, there is ongoing longshore work being performed off the coast of Alaska in connection with the fishing industry. Since delay in the issuance of an interim final rule precludes employers from filing attestations in Alaska in order to use the ''Alaska exception'', such employers may be encouraged by economic exigencies to utilize foreign crewmembers in longshore work illegally or to reflag their vessels to qualify for the reciprocity exception for vessels under the flags of countries which permit U.S. crewmembers to perform longshore work. Either of these actions by shippers would diminish employment opportunities for Alaskan stevedores, contrary to the purposes of the Act. Indeed, DOL has received information that further delay in implementing the Alaska exception could adversely impact the employment opportunities for Alaskan workers seeking longshore work. The Department, for good cause, has determined that this potential harm makes it impracticable and contrary to the public interest to delay implementation by publishing the rule as a proposed rule. 5 U.S.C. 553(b)(B).

Nevertheless, the Department is very interested in receiving comments on the interim final rule. These comments will be considered in the development of a final rule.

Catalog of Federal Domestic Assistance Number

This program is not listed in the *Catalog of Federal Domestic Assistance.*

List Of Subjects

20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Crewmembers, Employment, Enforcement, Fashion Models, Forest and Forest Products, Guam, Health professions, Immigration, Labor, Longshore work, Migrant labor, Nurse, Penalties, Registered nurse, Reporting and recordkeeping requirements, Specialty occupation, Students, Wages.

29 CFR Part 506

Administrative practice and procedures, Aliens, Crewmembers, Employment, Enforcement, Immigration, Labor, Longshore work, Penalties, Reporting and recordkeeping requirements.

Text of the Joint Interim Final Rule

For the reasons set forth in the common preamble, the text of the joint interim final rule as adopted by ETA and the Wage and Hour Division, ESA, and in this document appears below:

Subpart F—Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

General Provisions

Sec.

_____.500 Purpose, procedure and applicability of subparts F and G of this part.
_____.501 Overview of responsibilities.
_____.502 Definitions.
_____.510 Employer attestations.
_____.520 Special provisions regarding automated vessels.

Alaska Exception

_____.530 Special provisions regarding the performance of longshore activities at locations in the State of Alaska.
_____.531 Who may submit attestations for locations in Alaska?
_____.532 Where and when should attestations be submitted for locations in Alaska?

_____.533 What should be submitted for locations in Alaska?
_____.534 The first attestation element for locations in Alaska: Bona fide request for dispatch of United States longshore workers.
_____.535 The second attestation element for locations in Alaska: Employment of United States longshore workers.
_____.536 The third attestation element for locations in Alaska: No intention or design to influence bargaining representative election.
_____.537 The fourth attestation element for locations in Alaska: Notice of filing.
_____.538 Actions on attestations submitted for filing for locations in Alaska.
_____.539 Effective date and validity of filed attestations for locations in Alaska.
_____.540 Suspension or invalidation of filed attestations for locations in Alaska.
_____.541 Withdrawal of accepted attestations for locations in Alaska.

Public Access

_____.550 Public access.

Appendix A to Subpart F—U.S. Seaports

Subpart G—Enforcement of the Limitations Imposed on Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

Sec.

_____.600 Enforcement authority of Administrator, Wage and Hour Division.
_____.605 Complaints and investigative procedures.
_____.610 Automated vessel exception to prohibition on utilization of alien crewmember(s) to perform longshore activity(ies) at a U.S. port.
_____.615 Cease and desist order.
_____.620 Civil money penalties and other remedies.
_____.625 Written notice, service and Federal Register publication of Administrator's determination.
_____.630 Request for hearing.
_____.635 Rules of practice for administrative law judge proceedings.
_____.640 Service and computation of time.
_____.645 Administrative law judge proceedings.
_____.650 Decision and order of administrative law judge.
_____.655 Secretary's review of administrative law judge's decision.
_____.660 Administrative record.
_____.665 Notice to the Attorney General and the Employment and Training Administration.
_____.670 **Federal Register notice of determination of prevailing practice.**
_____.675 Non-applicability of the Equal Access to Justice Act.

Subpart F—Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

General Provisions

§ _____.500 Purpose, procedure and applicability of subparts F and G of this part.

(a) *Purpose.* (1) Section 258 of the Immigration and Nationality Act (''Act'') prohibits nonimmigrant alien crewmembers admitted to the United States on D-visas from performing longshore work at U.S. ports except in five specific instances:

(i) Where the vessel's country of registration does not prohibit U.S. crewmembers from performing longshore work in that country's ports and nationals of a country (or countries) which does not prohibit U.S. crewmembers from performing longshore work in that country's ports hold a majority of the ownership interest in the vessel, as determined by the Secretary of State (henceforth referred to as the ''reciprocity exception'');

(ii) Where there is in effect in a local port one or more collective bargaining agreement(s), each covering at least thirty percent of the longshore workers, and each permitting the activity to be performed under the terms of such agreement(s);

(iii) Where there is no collective bargaining agreement covering at least thirty percent of the longshore workers at the particular port and an attestation with accompanying documentation has been filed with the Department of Labor attesting that, among other things, the use of alien crewmembers to perform a particular activity of longshore work is permitted under the prevailing practice of the particular port (henceforth referred to as the ''prevailing practice exception'');

(iv) Where the longshore work is to be performed at a particular location in the State of Alaska and an attestation with accompanying documentation has been filed with the Department of Labor attesting that, among other things, before using alien crewmembers to perform the activity specified in the attestation, the employer will make a bona fide request for and employ United States longshore workers who are qualified and available in sufficient numbers from contract stevedoring companies, labor organizations recognized as exclusive bargaining representatives of United States longshore workers, and private dock operators (henceforth referred to as the ''Alaska exception''); or

(v) Where the longshore work involves an automated self-unloading conveyor belt or vacuum-actuated system on a vessel and the Administrator has not previously determined that an attestation must be filed pursuant to this part as a basis for performing those functions (henceforth referred to as the ''automated vessel exception'').

(2) The term ''longshore work'' does not include the loading or unloading of hazardous cargo, as determined by the Secretary of Transportation, for safety and environmental protection. The Department of Justice, through the Immigration and Naturalization Service (INS), determines whether an employer may use alien crewmembers for longshore work at U.S. ports. In those cases where an employer must file an attestation in order to perform such work, the Department of Labor shall be responsible for accepting the filing of such attestations. Subpart F of this part sets forth the procedure for filing attestations with the Department of Labor for employers proposing to use alien crewmembers for longshore work at U.S. ports under the prevailing practice exception, the Alaska exception, and where it has been determined that an attestation is required under the automated vessel exception listed in paragraph (a)(1)(iv) of this section. Subpart G of this part sets forth complaint, investigation, and penalty provisions with respect to such attestations.

(b) *Procedure.* (1) Under the prevailing practice exception in sec. 258(c) of the Act, and in those cases where it has been determined that an attestation is required under the automated vessel exception for longshore work to be performed at locations other than in the State of Alaska, the procedure involves filing an attestation with the Department of Labor attesting that:

(i) The use of alien crewmembers for a particular activity of longshore work is the prevailing practice at the particular port;

(ii) The use of alien crewmembers is not during a strike or lockout nor designed to influence the election of a collective bargaining representative; and

(iii) Notice of the attestation has been provided to the bargaining representative of longshore workers in the local port, or, where there is none, notice has been provided to longshore workers employed at the local port.

(2) Under the automated vessel exception in sec. 258(c) of the Act, no attestation is required in cases where longshore activity consists of the use of an automated self-unloading conveyor belt or vacuum-actuated system on a vessel. The legislation creates a rebuttable presumption that the use of alien crewmembers for the operation of such automated systems is the prevailing practice. In order to overcome such presumption, it must be shown by the preponderance of the evidence submitted by any interested party, that the use of alien crewmembers for such activity is not the prevailing practice at the particular port, that it is during a strike or lockout, or that it is intended or designed to influence an election of a bargaining representative for workers in the local port.

(3) Under the Alaska exception in sec. 258(d) of the Act, and in those cases where it has been determined that an attestation is required under the automated vessel exception consisting of the use of such equipment for longshore work to be performed in the State of Alaska, the procedure involves filing an attestation with the Department of Labor attesting that:

(i) The employer will make a bona fide request for United States longshore workers who are qualified and available in sufficient numbers to perform the activity at the particular time and location from the parties to whom notice has been provided under paragraph (b)(3)(iv) (B) and (C) of this section, except that:

(A) Wherever two or more contract stevedoring companies which meet the requirements of section 32 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 932) have signed a joint collective bargaining agreement with a single labor organization recognized as an exclusive bargaining representative of United States longshore workers within the meaning of the National Labor Relations Act (29 U.S.C. 141 *et seq.*), the employer may request longshore workers from only one such contract stevedoring company, and

(B) A request for longshore workers to an operator of a private dock may be made only for longshore work to be performed at that dock and only if the operator meets the requirements of section 32 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 932);

(ii) The employer will employ all United States longshore workers made available in response to the request made pursuant to paragraph (b)(3)(i) of this section who are qualified and available in sufficient numbers and who are needed to perform the longshore activity at the particular time and location attested to;

(iii) The use of alien crewmembers for such activity is not intended or designed to influence and election of a bargaining representative for workers in the State of Alaska; and

(iv) Notice of the attestation has been provided to:

(A) Labor organizations which have been recognized as exclusive bargaining representatives of United States longshore workers within the meaning of the National Labor Relations Act (29 U.S.C. 141 *et seq.*) and which make available or intend to make available workers to the particular location where the longshore work is to be performed;

(B) Contract stevedoring companies which employ or intend to employ United States longshore workers at that location; and

(C) Operators of private docks at which the employer will use longshore workers.

(c) *Applicability.* Subparts F and G of this part apply to all employers who seek to employ alien crewmembers for longshore work at U.S. ports under the prevailing practice exception, to all employers who seek to employ alien crewmembers for longshore work at locations in the State of Alaska under the Alaska exception, to all employers claiming the automated vessel exception, and to those cases where it has been determined that an attestation is required under the automated vessel exception.

§ _____.501 Overview of responsibilities.

This section provides a context for the attestation process, to facilitate understanding by employers that may seek to employ alien crewmembers for longshore work under the prevailing practice exception, under the Alaska exception, and in those cases where an attestation is necessary under the automated vessel exception.

(a) *Department of Labor's responsibilities.* The United States Department of Labor (DOL) administers the attestation process. Within DOL, the Employment and Training Administration (ETA) shall have responsibility for setting up and operating the attestation process; the Employment Standards Administration's Wage and Hour Division shall be responsible for investigating and resolving any complaints filed concerning such attestations.

(b) *Employer attestation responsibilities.* (1) Each employer seeking to use alien crewmembers for longshore work at a local U.S. port pursuant to the prevailing practice exception or where an attestation is required under the automated vessel exception for longshore work to be performed at locations other than in the State of Alaska shall, as the first step, submit an attestation on Form ETA 9033, as described in § _____.510 of this part, to ETA at the address set forth at § _____.510(b) of this part. If ETA accepts the attestation for filing, pursuant to § _____.510 of this part, ETA shall return the cover form of the accepted attestation to the employer, and, at the same time, shall provide notice of the filing to the Immigration and Naturalization Service (INS) office having jurisdiction over the port where longshore work will be performed.

(2) Each employer seeking to use alien crewmembers for longshore work at a particular location in the State of Alaska pursuant to the Alaska exception or where an attestation is required under the automated vessel exception for longshore work to be performed at a particular location in Alaska shall submit, as a first step, an attestation on Form ETA 9033–A, as described in § _____.533 of this part, to ETA at the address of the Seattle regional office as set forth at § _____.532 of this part. The address appears in the instructions to Form ETA 9033–A. ETA shall return the cover form of the accepted attestation to the employer, and, at the same time, shall provide notice of the filing to the INS office having jurisdiction over the location where longshore work will be performed.

(c) *Complaints.* Complaints concerning misrepresentation in the attestation, failure of the employer to carry out the terms of the attestation, or complaints that an employer is required to file an attestation under the automated vessel exception, may be filed with the Wage and Hour Division, according to the procedures set forth in subpart G of this part. Complaints of ''misrepresentation'' may include assertions that an employer has attested to the use of alien crewmembers only for a particular activity of longshore work and has thereafter used such alien crewmembers for another activity of longshore work. If the Division determines that the complaint presents reasonable cause to warrant an investigation, the Division shall then investigate, and, where appropriate, after an opportunity for a hearing, assess sanctions and penalties. Subpart G of this part further provides that interested parties may obtain an administrative law judge hearing on the Division's determination after an investigation and may seek the Secretary's review of the

administrative law judge's decision. Subpart G of this part also provides that a complainant may request that the Wage and Hour Administrator issue a cease and desist order in the case of either alleged violation(s) of an attestation or longshore work by alien crewmember(s) employed by an employer allegedly not qualified for the claimed automated vessel exception. Upon the receipt of such a request, the Division shall notify the employer, provide an opportunity for a response and an informal meeting, and then rule on the request, which shall be granted if the preponderance of the evidence submitted supports the complainant's position.

§ _____.502 Definitions.

For the purposes of subparts F and G of this part:

Accepted for filing means that a properly completed attestation on Form ETA 9033, including accompanying documentation for each of the requirements in § _____.510 (d) through (f) of this part, or a properly completed attestation on Form ETA 9033–A, including accompanying documentation for the requirement in § _____.537 of this part in the case of an attestation under the Alaska exception, submitted by the employer or its designated agent or representative has been received and filed by the Employment and Training Administration of the Department of Labor (DOL). (Unacceptable attestations under the prevailing practice exception are described at § _____.510(g)(2) of this part. Unacceptable attestations under the Alaska exception are described at § _____.538(b) of this part.)

Act and *INA* mean the Immigration and Nationality Act, as amended, 8 U.S.C. 1101 *et seq.*

Activity means any activity relating to loading cargo; unloading cargo; operation of cargo-related equipment; or handling of mooring lines on the dock when a vessel is made fast or let go.

Administrative law judge means an official appointed pursuant to 5 U.S.C. 3105.

Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, Department of Labor, or such authorized representatives as may be designated to perform any of the functions of the Administrator under subparts F and G of this part.

Attestation means documents submitted by an employer attesting to and providing accompanying documentation to show that, under the prevailing practice exception, the use of alien crewmembers for a particular activity of longshore work at a particular U.S. port is the prevailing practice, and is not during a strike or lockout nor intended to influence an election of a bargaining representative for workers; and that notice of the attestation has been provided to the bargaining representative, or, where there is none, to the longshore workers at the local port. Under the Alaska exception, such documents shall show that, before using alien crewmen to perform longshore work, the employer will make bona fide requests for dispatch of United States longshore workers who are qualified and available in sufficient numbers and that the employer will employ all such United States longshore workers in response to such a request for dispatch; that the use of alien crewmembers is not intended or designed to influence an election of a bargaining representative for workers in the State of Alaska; and that notice of the attestation has been provided to labor organizations recognized as exclusive bargaining representatives of United States longshore workers, contract stevedoring companies, and operators of private docks at which the employer will use longshore workers.

Attesting employer means an employer who has filed an attestation.

Attorney General means the chief official of the U.S. Department of Justice or the Attorney General's designee.

Automated vessel means a vessel equipped with an automated self-unloading conveyor belt or vacuum-actuated system which is utilized for loading or unloading cargo between the vessel and the dock.

Certifying Officer means a Department of Labor official who makes determinations about whether or not to accept attestations:

(1) A regional Certifying Officer designated by a Regional Administrator, Employment and Training Administration (RA) makes such determinations in a regional office of the Department;

(2) A national Certifying Officer makes such determinations in the national office of the USES.

Chief, Division of Foreign Labor Certifications, USES means the chief official of the Division of Foreign Labor Certifications within the United States Employment Service, Employment and Training Administration, Department of Labor, or the designee of the Chief, Division of Foreign Labor Certifications, USES.

Chief Administrative Law Judge means the chief official of the Office of the Administrative Law Judges of the Department of Labor or the Chief Administrative Law Judge's designee.

Contract stevedoring company means a stevedoring company which is licensed to do business in the State of Alaska and which meets the requirements of section 32 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 932).

Crewmember means any nonimmigrant alien admitted to the United States to perform services under sec. 101(a)(15)(D)(i) of the Act (8 U.S.C. 1101(a)(15)(D)(i)).

Date of filing means the date an attestation is *accepted for filing* by ETA.

Department and *DOL* mean the United States Department of Labor.

Director means the chief official of the United States Employment Service (USES), Employment and Training Administration, Department of Labor, or the Director's designee.

Division means the Wage and Hour Division of the Employment Standards Administration, DOL.

Employer means a person, firm, corporation, or other association or organization, which suffers or permits, or proposes to suffer or permit, alien crewmembers to perform longshore work at a port within the U.S. For purposes of §§ _____.530 through _____.541, which govern the performance of longshore activities by alien crewmembers under the Alaska exception, ''employer'' includes any agent or representative designated by the employer.

Employment and Training Administration (ETA) means the agency within the Department of Labor (DOL) which includes the United States Employment Service (USES).

Employment Standards Administration (ESA) means the agency within the Department of Labor (DOL) which includes the Wage and Hour Division.

Immigration and Naturalization Service (INS) means the component of the Department of Justice which makes the determination under the Act on whether an employer of alien crewmembers may use such crewmembers for longshore work at a U.S. port.

Lockout means a labor dispute involving a work stoppage, wherein an employer withholds work from its employees in order to gain a concession from them.

Longshore work means any activity (except safety and environmental protection work as described in sec. 258(b)(2) of the Act) relating to the loading or unloading of cargo, the operation of cargo related equipment (whether or not integral to the vessel),

or the handling of mooring lines on the dock when the vessel is made fast or let go, in the United States or the coastal waters thereof.

Longshore worker means a U.S. worker who performs longshore work.

Port means a geographic area, either on a seacoast, lake, river or any other navigable body of water, which contains one or more publicly or privately owned terminals, piers, docks, or maritime facilities, which is commonly thought of as a port by other government maritime-related agencies, such as the Maritime Administration. U.S. ports include, but are not limited to, those listed in Appendix A to this subpart.

Qualified and available in sufficient numbers means the full complement of qualified longshore workers needed to perform the longshore activity, as determined by industry standards in the State of Alaska, including safety considerations.

Regional Administrator, Employment and Training Administration (RA) means the chief official of the Employment and Training Administration (ETA) in a Department of Labor (DOL) regional office.

Secretary means the Secretary of Labor or the Secretary's designee.

Strike means a labor dispute wherein employees engage in a concerted stoppage of work (including stoppage by reason of the expiration of a collective-bargaining agreement) or engage in any concerted slowdown or other concerted interruption of operations.

Unanticipated emergency means an unexpected and unavoidable situation, such as one involving severe weather conditions, natural disaster, or mechanical breakdown, where cargo must be immediately loaded on, or unloaded from, a vessel.

United States is defined at 8 U.S.C. 1101(a)(38).

United States Employment Service (USES) means the agency of the Department of Labor, established under the Wagner-Peyser Act, which is charged with administering the national system of public employment offices.

United States (U.S.) worker means a worker who is a U.S. citizen, a U.S. national, a permanent resident alien, or any other worker legally permitted to work indefinitely in the United States.

§ _____.510 Employer attestations.

(a) *Who may submit attestations?* An employer (or the employer's designated U.S. agent or representative) seeking to employ alien crewmembers for a particular activity of longshore work under the prevailing practice exception shall submit an attestation, provided there is not in effect in the local port any collective bargaining agreement covering at least 30 percent of the longshore workers. An attestation is required for each port at which the employer intends to use alien crewmembers for longshore work. The attestation shall include: A completed Form ETA 9033, which shall be signed by the employer (or the employer's designated agent or representative); and facts and evidence prescribed in paragraphs (d) through (f) of this section. This § _____.510 shall not apply in the case of longshore work performed at a particular location in the State of Alaska. The procedures governing the filing of attestations under the Alaska exception are set forth at §§ _____.530 through _____.541.

(b) Where and when should attestations be submitted? (1) Attestations must be submitted, by U.S. mail, private carrier, or facsimile transmission to the U.S. Department of Labor ETA Regional Office(s) which are designated by the Chief, Division of Foreign Labor Certifications, USES. Attestations must be received and date-stamped by DOL at least 14 calendar days prior to the date of the first performance of the intended longshore activity, and shall be accepted for filing or returned by ETA in accordance with paragraph (g) of this section within 14 calendar days of the date received by ETA. An attestation which is accepted by ETA solely because it was not reviewed within 14 days is subject to subsequent invalidation pursuant to paragraph (i) of this section. Every employer filing an attestation shall have an agent or representative with a United States address. Such address shall be clearly indicated on the Form ETA 9033. In order to ensure that an attestation has been accepted for filing prior to the date of the performance of the longshore activity, employers are advised to take mailing time into account to make sure that ETA receives the attestation at least 14 days prior to the first performance of the longshore activity.

(2) *Unanticipated Emergencies.* ETA may accept for filing attestations received after the 14-day deadline when due to an unanticipated emergency, as defined in § _____.502 of this part. When an employer is claiming an unanticipated emergency, it shall submit documentation to support such a claim. ETA shall then make a determination on the validity of the claim, and shall accept the attestation for filing or return it in accordance with paragraph (g) of this section. ETA shall in no case accept an attestation received later than the date of the first performance of the activity.

(c) *What should be submitted?* (1) *Form ETA 9033 with accompanying documentation.* For each port, a completed and dated original Form ETA 9033, or facsimile transmission thereof, containing the required attestation elements and the original signature of the employer (or the employer's designated agent or representative) shall be submitted, along with two copies of the completed, signed, and dated Form ETA 9033. (If the attestation is submitted by facsimile transmission, the attestation containing the original signature shall be maintained at the U.S. business address of the employer's designated agent or representative). Copies of Form ETA 9033 are available at all Department of Labor ETA Regional Offices and at the National Office. In addition, the employer shall submit two sets of all facts and evidence to show compliance with each of the attestation elements as prescribed by the regulatory standards in paragraphs (d) through (f) of this section. In the case of an investigation pursuant to subpart G of this part, the employer shall have the burden of proof to establish the validity of each attestation. The employer shall maintain in its records at the office of its U.S. agent, for a period of at least 3 years from the date of filing, sufficient documentation to meet its burden of proof, which shall at a minimum include the documentation described in this § _____.510, and shall make the documents available to Department of Labor officials upon request.

Whenever any document is submitted to a Federal agency or retained in the employer's records pursuant to this part, the document either shall be in the English language or shall be accompanied by a written translation into the English language certified by the translator as to the accuracy of the translation and his/her competency to translate.

(2) *Statutory precondition regarding collective bargaining agreements.* (i) The employer may file an attestation only when there is no collective bargaining agreement in effect in the port covering 30 percent or more of the longshore workers in the port. The employer shall attest on the Form ETA 9033 that no such collective bargaining agreement exists at the port at the time that the attestation is filed.

(ii) The employer is not required to submit with the Form ETA 9033 documentation substantiating that there is no collective bargaining agreement in effect in the port covering 30 percent or more of the longshore workers. If a complaint is filed which presents reasonable cause to believe that such an agreement exists, the Department shall

conduct an investigation. In such an investigation, the employer shall have the burden of proving that no such collective bargaining agreement exists.

(3) *Ports for which attestations may be filed.* Employers may file an attestation for a port which is listed in Appendix A (U.S. Seaports) to this subpart. Employers may also file an attestation for a particular location not in Appendix A to this subpart if additional facts and evidence are submitted with the attestation to demonstrate that the location is a port, meeting all of the criteria as defined by § _____.502 of this part.

(4) *Attestation elements.* The attestation elements referenced in paragraph (c)(1) of this section are mandated by sec. 258(c)(1)(B) of the Act (8 U.S.C. 1288(c)(1)(B)). Section 258(c)(1)(B) of the Act requires employers who seek to have alien crewmembers engage in a longshore activity to attest as follows:

(i) The performance of the activity by alien crewmembers is permitted under the prevailing practice of the particular port as of the date of filing of the attestation;

(ii) The use of the alien crewmembers for such activity is not during a strike or lockout in the course of a labor dispute, and is not intended or designed to influence an election of a bargaining representative for workers in the local port; and

(iii) Notice of the attestation has been provided by the owner, agent, consignee, master, or commanding officer to the bargaining representative of longshore workers in the local port, or, where there is no such bargaining representative, notice has been provided to longshore workers employed at the local port.

(d) *The first attestation element: prevailing practice.* For an employer to be in compliance with the first attestation element, it is required to have been the prevailing practice during the 12-month period preceding the filing of the attestation, for a particular activity of longshore work at the particular port to be performed by alien crewmembers. For each port, a prevailing practice can exist for any of four different types of longshore work: loading of cargo, unloading of cargo, operation of cargo-related equipment, or handling of mooring lines. It is thus possible that at a particular port it is the prevailing practice for alien crewmembers to unload vessels but not the prevailing practice to load them. An employer shall indicate on the attestation form which of the four longshore activities it is claiming is the prevailing practice for such work to be performed by alien crewmembers.

(1) *Establishing a prevailing practice.*

(i) In establishing that a particular activity of longshore work is the prevailing practice at a particular port, an employer shall submit facts and evidence to show that in the 12-month period preceding the filing of the attestation, one of the following conditions existed:

(A) Over fifty percent of vessels docking at the port used alien crewmembers for the activity; or

(B) Alien crewmembers made up over fifty percent of the workers in the port who engaged in the activity.

(ii) *Prevailing practice after Secretary of State determination of non-reciprocity.* Section 258(d) of the Act provides a reciprocity exception (separate from the prevailing practice exception) to the prohibition on performance of longshore work by alien crewmembers in U.S. ports. However, this reciprocity exception becomes nonapplicable where the Secretary of State determines that, for a particular activity of longshore work, a particular country (by law, regulation, or practice) prohibits such activity by U.S. crewmembers in its ports. When the Secretary of State places a country on the non-reciprocity list (which means, for the purposes of this section, *Prohibitions on longshore work by U.S. nationals; listing by country* at 22 CFR 89.1), crewmembers on vessels from that country (that is, vessels that are registered in that country or vessels whose majority ownership interest is held by nationals of that country) are not permitted to perform longshore work in U.S. waters, absent applicability of some exception other than the reciprocity exception. The Secretary of State's determination has the following effects in the establishment of a prevailing practice for a particular longshore activity at a particular U.S. port for purposes of the prevailing practice exception.

(A) An employer from any country, other than the country which is placed on the non-reciprocity list, may include the longshore activities performed by alien crewmembers on all vessels in establishing the prevailing practice for a particular longshore activity in a particular port.

(B) An employer from a country which is placed on the non-reciprocity list may file an attestation for the prevailing practice exception under the standards and requirements established in this subpart F (except as provided in paragraph (d)(1)(ii)(C) of this section), provided that the attestation is filed at least 12 months after the date on which the employer's country is placed on the list.

(C) An employer from a country which is placed on the non-reciprocity list may file an attestation pursuant to the prevailing practice exception earlier than 12 months from the date on which the employer's country is placed on the list, except that the following restrictions shall apply to such attestation:

(*1*) The employer shall submit facts and evidence to show that, for the 12-month period preceding the date of the attestation, the use of alien crewmembers to perform a particular activity of longshore work was permitted by the prevailing practice in the port (as defined in paragraph (d)(1)(i) of this section) without considering or including such activity by crewmembers on vessels from the employer's country; or

(*2*) The employer shall submit facts and evidence (including data on activities performed by crewmembers on vessels from the employer's country) to show that the use of alien crewmembers to perform a particular activity of longshore work was permitted by the prevailing practice in the port (as defined in paragraph (d)(1)(i) of this section) for one of two periods—

(*i*) For the employer whose country has not previously been on the non-reciprocity list, the period is the continuous 12-month period prior to May 28, 1991 (the effective date of section 258 of the Act); or

(*ii*) For the employer whose country was at some time on the non-reciprocity list, but was subsequently removed from the non-reciprocity list and then restored to the non-reciprocity list (on one or more occasions), the period is the last continuous 12-month period during which the employer's country was not under the reciprocity exception (that is, was listed on the non-reciprocity list).

(*iii*) For purposes of this paragraph (d)(1):

(A) ''Workers in the port engaged in the activity'' means any person who performed the activity in any calendar day;

(B) Vessels shall be counted each time they dock at the particular port):

(C) Vessels exempt from section 258 of the INA for safety and environmental protection shall not be included in counting the number of vessels which dock at the port (see Department of Transportation Regulations); and

(D) Automated vessels shall not be included in counting the number of vessels which dock at the port. For establishing a prevailing practice under

the automated vessel exception see § _____.520 of this part.

(2) *Documentation.* In assembling the facts and evidence required by paragraph (d)(1) of this section, the employer may consult with the port authority which has jurisdiction over the local port, the collective bargaining representative(s) of longshore workers at the local port, other employers, or any other entity which is familiar with the practices at the port. Such documentation shall include a written summary of a survey of the experience of shipmasters who entered the local port in the previous year; or a letter, affidavit, or other written statement from an appropriate local port authority regarding the use of alien crewmembers to perform the longshore activity at the port in the previous year; or other documentation of comparable weight. Written statements from collective bargaining representatives and/or shipping agents with direct knowledge of practices regarding the use of alien crewmembers in the local port may also be pertinent. Such documentation shall accompany the Form ETA 9033, and any underlying documentation which supports the employer's burden of proof shall be maintained in the employer's records at the office of the U.S. agent as required by paragraph (c)(1) of this section.

(e) *The second attestation element: no strike or lockout; no intention or design to influence bargaining representative election.* (1) The employer shall attest that, at the time of submitting the attestation, there is not a strike or lockout in the course of a labor dispute covering the employer's activity, and that it will not use alien crewmembers during a strike or lockout after filing the attestation. The employer shall also attest that the employment of such aliens is not intended or designed to influence an election for a bargaining representative for workers in the local port. Labor disputes for purposes of this attestation element relate only to those involving longshore workers at the port of intended employment. This attestation element applies to strikes and lockouts and elections of bargaining representatives at the local port where the use of alien crewmembers for longshore work is intended.

(2) *Documentation.* As documentation to substantiate the requirement in paragraph (e)(1) of this section, an employer may submit a statement of the good faith efforts made to determine whether there is a strike or lockout at the particular port, as, for example, by contacting the port authority or the collective bargaining representative for longshore workers at the particular port.

(f) *The third attestation element: notice of filing.* The employer of alien crewmembers shall attest that at the time of filing the attestation, notice of filing has been provided to the bargaining representative of the longshore workers in the local port, or, where there is no such bargaining representative, notice of the filing has been provided to longshore workers employed at the local port through posting in conspicuous locations and through other appropriate means.

(1) *Notification of bargaining representative.* No later than the date the attestation is received by DOL to be considered for filing, the employer of alien crewmembers shall notify the bargaining representative (if any) of longshore workers at the local port that the attestation is being submitted to DOL. The notice shall include a copy of the Form ETA 9033, shall state the activity(ies) for which the attestation is submitted, and shall state in that notice that the attestation and accompanying documentation are available at the national office of ETA for review by interested parties. The employer may have its owner, agent, consignee, master, or commanding officer provide such notice. Notices under this paragraph (f)(1) shall include the following statement: ''Complaints alleging misrepresentation of material facts in the attestation and/or failure to comply with the terms of the attestation may be filed with any office of the Wage and Hour Division of the United States Department of Labor.''

(2) *Posting notice where there is no bargaining representative.* If there is no bargaining representative of longshore workers at the local port when the employer submits an attestation to ETA, the employer shall provide written notice to the port authority for distribution to the public on request. In addition, the employer shall post one or more written notices at the local port, stating that the attestation with accompanying documentation has been submitted, the activity(ies) for which the attestation has been submitted, and that the attestation and accompanying documentation are available at the national office of ETA for review by interested parties. Such posted notice shall be clearly visible and unobstructed, and shall be posted in conspicuous places where the longshore workers readily can read the posted notice on the way to or from their duties. Appropriate locations for posting such notices include locations in the immediate proximity of mandatory Fair Labor Standards Act wage and hour notices and Occupational Safety and Health Act occupational safety and health notices. The notice shall include a copy of the Form ETA 9033 filed with DOL, shall provide information concerning the availability of supporting documents for examination at the national office of ETA, and shall include the following statement: ''Complaints alleging misrepresentation of material facts in the attestation and/or failure to comply with the terms of the attestation may be filed with any office of the Wage and Hour Division of the United States Department of Labor.''

(3) *Documentation.* The employer shall provide a statement setting forth the name and address of the person to whom the notice was provided and where and when the notice was posted and shall attach a copy of the notice.

(g) *Actions on attestations submitted for filing.* Once an attestation has been received from an employer, a determination shall be made by the regional Certifying Officer whether to accept the attestation for filing or return it. The regional Certifying Officer may request additional explanation and/or documentation from the employer in making this determination. An attestation which is properly filled out and which includes accompanying documentation for each of the requirements set forth at § _____.510(d) through (f) shall be accepted for filing by ETA on the date it is signed by the regional Certifying Officer unless it falls within one of the categories set forth in paragraph (g)(2) of this section. Once an attestation is accepted for filing, ETA shall then follow the procedures set forth in paragraph (g)(1) of this section. Upon acceptance of the employer's attestation by ETA, the attestation and accompanying documentation will be forwarded and shall be available in a timely manner for public examination at the ETA national office. ETA shall not consider information contesting an attestation received by ETA prior to the determination to accept or return the attestation for filing. Such information shall not be made part of ETA's administrative record on the attestation, but shall be referred to ESA to be processed as a complaint pursuant to subpart G of this part if the attestation is accepted by ETA for filing.

(1) *Acceptance.* (i) If the attestation is properly filled out and includes accompanying documentation for each of the requirements at § _____.510(d) through (f), and does not fall within one of the categories set forth at paragraph (g)(2) of this section, ETA shall accept the attestation for filing, provide notification to the INS office having jurisdiction over the port where longshore work will be performed, and

return to the employer, or the employer's agent or representative at a U.S. address, one copy of the attestation form submitted by the employer, with ETA's acceptance indicated thereon. The employer may then use alien crewmembers for the particular activity of longshore work at the U.S. port cited in the attestation in accordance with INS regulations.

(ii) DOL is not the guarantor of the accuracy, truthfulness or adequacy of an attestation accepted for filing.

(2) *Unacceptable attestations.* ETA shall not accept an attestation for filing and shall return such attestation to the employer, or the employer's agent or representative at a U.S. address, when one of the following conditions exists:

(i) When the Form ETA 9033 is not properly filled out. Examples of improperly filled out Form ETA 9033's include instances where the employer has neglected to check all the necessary boxes, or where the employer has failed to include the name of the port where it intends to use the alien crewmembers for longshore work, or where the employer has named a port that is not listed in Appendix A and has failed to submit facts and evidence to support a showing that the location is a port as defined by § _____.502, or when the employer has failed to sign the attestation or to designate an agent in the United States;

(ii) When the Form ETA 9033 with accompanying documentation is not received by ETA at least 14 days prior to the date of performance of the first activity indicated on the Form ETA 9033; unless the employer is claiming an unanticipated emergency, has included documentation which supports such claim, and ETA has found the claim to be valid;

(iii) When the Form ETA 9033 does not include accompanying documentation for each of the requirements set forth at § _____.510 (d) through (f);

(iv) When the accompanying documentation required by paragraph (c) of this section submitted by the employer, on its face, is inconsistent with the requirements set forth at § _____.510 (d) through (f). Examples of such a situation include instances where the Form ETA 9033 pertains to one port and the accompanying documentation to another; where the Form ETA 9033 pertains to one activity of longshore work and the accompanying documentation obviously refers to another; or where the documentation clearly indicates that only thirty percent, instead of the required fifty percent, of the activity attested to is performed by alien crewmembers;

(v) When the Administrator, Wage and Hour Division, has notified ETA, in writing, after an investigation pursuant to subpart G of this part, that the particular activity of longshore work which the employer has attested is the prevailing practice at a particular port, is not, in fact, the prevailing practice at the particular port;

(vi) When the Administrator, Wage and Hour Division, has notified ETA, in writing, that a cease and desist order has been issued pursuant to subpart G of this part, with respect to the attesting employer's performance of the particular activity and port, in violation of a previously accepted attestation;

(vii) When the Administrator, Wage and Hour Division, has notified ETA, in writing, after an investigation pursuant to subpart G of this part, that the particular employer has misrepresented or failed to comply with an attestation previously submitted and accepted for filing, but in no case for a period of more than one year after the date of the Administrator's notice and provided that INS has not advised ETA that the prohibition is in effect for a lesser period; or

(viii) When the Administrator, Wage and Hour Division, has notified ETA, in writing, that the employer has failed to comply with any penalty, sanction, or other remedy assessed in a final agency action following an investigation by the Wage and Hour Division pursuant to subpart G of this part.

(3) *Resubmission.* If the attestation is not accepted for filing pursuant to the categories set forth in paragraph (g)(2) of this section, ETA shall return to the employer, or the employer's agent or representative, at a U.S. address, the attestation form and accompanying documentation submitted by the employer. ETA shall notify the employer, in writing, of the reason(s) that the attestation is unacceptable. When an attestation is found to be unacceptable pursuant to paragraphs (g)(2) (i) through (iv) of this section, the employer may resubmit the attestation with the proper documentation. When an attestation is found to be unacceptable pursuant to paragraphs (g)(2) (v) through (viii) of this section and returned, such action shall be the final decision of the Secretary of Labor.

(h) *Effective date and validity of filed attestations.* An attestation is filed and effective as of the date it is accepted and signed by the regional Certifying Officer. Such attestation is valid for the 12-month period beginning on the date of acceptance for filing, unless suspended or invalidated pursuant to subpart G of this part or paragraph (i) of this section. The filed attestation expires at the end of the 12-month period of validity.

(i) *Suspension or invalidation of filed attestations.* Suspension or invalidation of an attestation may result from enforcement action(s) under subpart G of this part (*i.e.*, investigation(s) conducted by the Administrator or cease and desist order(s) issued by the Administrator regarding the employer's misrepresentation in or failure to carry out its attestation); or from a discovery by ETA that it made an error in accepting the attestation because such attestation falls within one of the categories set forth in paragraph (g)(2) of this section.

(1) *Result of Wage and Hour Division action.* Upon the determination of a violation under subpart G of this part, the Administrator shall, pursuant to § _____.660(b), notify the Attorney General of the violation and of the Administrator's notice to ETA.

(2) *Result of ETA action.* If, after accepting an attestation for filing, ETA finds that the attestation is unacceptable because it falls within one of the categories set forth at paragraph (g)(2) of this section, and as a result, ETA suspends or invalidates the attestation, ETA shall notify the Attorney General of such suspension or invalidation and shall return a copy of the attestation form to the employer, or the employer's agent or representative, at a U.S. address. ETA shall notify the employer, in writing, of the reason(s) that the attestation is suspended or invalidated. When an attestation is found to be suspended or invalidated pursuant to paragraphs (g)(2) (i) through (iv) of this section, the employer may resubmit the attestation with the proper documentation. When an attestation is suspended or invalidated because it falls within one of the categories in paragraphs (g)(2) (v) through (viii) of this section, such action shall be the final decision of the Secretary of Labor, except as set forth in subpart G of this part.

(j) *Withdrawal of accepted attestations.* (1) An employer who has submitted an attestation which has been accepted for filing may withdraw such attestation at any time before the 12-month period of its validity terminates, unless the Administrator has found reasonable cause under subpart G to commence an investigation of the particular attestation. Such withdrawal may be advisable, for example, when the employer learns that the particular activity(ies) of longshore work which it has attested is the prevailing practice to perform with alien crewmembers may not, in fact, have been the prevailing

practice at the particular port at the time of filing. Requests for such withdrawals shall be in writing and shall be directed to the regional Certifying Officer.

(2) Withdrawal of an attestation shall not affect an employer's liability with respect to any failure to meet the conditions attested to which took place before the withdrawal, or for misrepresentations in an attestation. However, if an employer has not yet performed the particular longshore activity(ies) at the port in question, the Administrator will not find reasonable cause to investigate unless it is alleged, and there is reasonable cause to believe, that the employer has made misrepresentations in the attestation or documentation thereof, or that the employer has not in fact given the notice attested to.

(Approved by the Office of Management and Budget under Control No. 1205–0309)

§ _____.520 Special provisions regarding automated vessels.

In general, an attestation is not required in the case of a particular activity of longshore work consisting of the use of automated self-unloading conveyor belt or vacuum-actuated systems on a vessel. The legislation creates a rebuttable presumption that the use of alien crewmembers for the operation of such automated systems is the prevailing practice. In order to overcome such presumption, it must be shown by the preponderance of the evidence submitted by any interested party, that the use of alien crewmembers for such activity is not the prevailing practice. Longshore work involving the use of such equipment shall be exempt from the attestation requirement only if the activity consists of using that equipment. If the automated equipment is not used in the particular activity of longshore work, an attestation is required as described under § _____.510 of this part if it is the prevailing practice in the port to use alien crewmembers for this work, except that in all cases, where an attestation is required for longshore work to be performed at a particular location in the State of Alaska, an employer shall file such attestation under the Alaska exception pursuant to §§ _____.530 through _____.541 on Form ETA 9033–A. When automated equipment is used in the particular activity of longshore work, an attestation is required only if the Administrator finds, based on a preponderance of the evidence which may be submitted by any interested party, that the performance of the particular activity of longshore work is not the prevailing practice at the port, or was during a strike or lockout or intended to influence an election of a bargaining representative for workers in the local port, or if the Administrator issues a cease and desist order against use of the automated equipment without such attestation.

(a) *Procedure when attestation is required.* If it is determined pursuant to subpart G of this part that an attestation is required for longshore work consisting of the use of automated equipment at a location other than in the State of Alaska, the employer shall comply with all the requirements set forth at § _____.510 of this part except paragraph (d) of § _____.510. In lieu of complying with § _____.510(d) of this part, the employer shall comply with paragraph (b) of this section. If it is determined pursuant to subpart G of this part that an attestation is required for longshore work consisting of the use of automated equipment at a particular location in the State of Alaska, the employer shall comply with all the requirements set forth at §§ _____.530 through _____.541 of this part.

(b) *The first attestation element: prevailing practice for automated vessels.* For an employer to be in compliance with the first attestation element, it is required to have been the prevailing practice that over fifty percent (as described in paragraph (b)(1) of this section) of a particular activity of longshore work which was performed through the use of automated self-unloading conveyor belt or vacuum-actuated equipment at the particular port during the 12-month period preceding the filing of the attestation, was performed by alien crewmembers. For purposes of this paragraph (b), only automated vessels shall be included in counting the number of vessels which dock at the port.

(1) *Establishing a prevailing practice.*

(i) In establishing that the use of alien crewmembers to perform a particular activity of longshore work consisting of the use of self-unloading conveyor belt or vacuum-actuated systems on a vessel is the prevailing practice at a particular port, an employer shall submit facts and evidence to show that in the 12-month period preceding the filing of the attestation, one of the following conditions existed:

(A) Over fifty percent of the automated vessels docking at the port used alien crewmembers for the activity (for purposes of this paragraph (b)(1), a vessel shall be counted each time it docks at the particular port); or

(B) Alien crewmembers made up over fifty percent of the workers who performed the activity with respect to such automated vessels.

(ii) *Prevailing practice after Secretary of State determination of non-reciprocity.* Section 258(d) of the Act provides a reciprocity exception (separate from the prevailing practice exception) to the prohibition on performance of longshore work by alien crewmembers in U.S. ports. However, this reciprocity exception becomes nonapplicable where the Secretary of State determines that, for a particular activity of longshore work, a particular country (by law, regulation, or practice) prohibits such activity by U.S. crewmembers in its ports. When the Secretary of State places a country on the non-reciprocity list (which means, for the purposes of this section, *Prohibitions on longshore work by U.S. nationals; listing by country* at 22 CFR 89.1), crewmembers on vessels from that country (that is, vessels that are registered in that country or vessels whose majority ownership interest is held by nationals of that country) are not permitted to perform longshore work in U.S. waters, absent applicability of some exception other than the reciprocity exception. The Secretary of State's determination has the following effects in the establishment of a prevailing practice for a particular longshore activity at a particular U.S. port for purposes of the prevailing practice exception.

(A) An employer from any country, other than the country which is placed on the non-reciprocity list, may include the longshore activities performed by alien crewmembers on all vessels in establishing the prevailing practice for a particular longshore activity in a particular port.

(B) An employer from a country which is placed on the non-reciprocity list may file an attestation for the prevailing practice exception under the standards and requirements established in this subpart F (except as provided in paragraph (b)(1)(ii)(C) of this section), provided that the attestation is filed at least 12 months after the date on which the employer's country is placed on the list.

(C) An employer from a country which is placed on the non-reciprocity list may file an attestation pursuant to the prevailing practice exception earlier than 12 months from the date on which the employer's country is placed on the list, except that the following restrictions shall apply to such attestation:

(*1*) The employer shall submit facts and evidence to show that, for the 12-month period preceding the date of the attestation, the use of alien

crewmembers to perform a particular activity of longshore work was permitted by the prevailing practice in the port (as defined in paragraph (d)(1)(i) of this section) without considering or including such activity by crewmembers on vessels from the employer's country; or

(*2*) The employer shall submit facts and evidence (including data on activities performed by crewmembers on vessels from the employer's country) to show that the use of alien crewmembers to perform a particular activity of longshore work was permitted by the prevailing practice in the port (as defined in paragraph (b)(1)(i) of this section) for one of two periods—

(*i*) For the employer whose country has not previously been on the non-reciprocity list, the period is the continuous 12-month period prior to May 28, 1991 (the effective date of section 258 of the Act); or

(*ii*) For the employer whose country was at some time on the non-reciprocity list, but was subsequently removed from the non-reciprocity list and then restored to the non-reciprocity list (on one or more occasions), the period is the last continuous 12-month period during which the employer's country was not under the reciprocity exception (that is, was listed on the non-reciprocity list).

(2) *Documentation.* In assembling the documentation described in paragraph (b)(1) of this section, the employer may consult with the port authority which has jurisdiction over the local port, the collective bargaining representative(s) of longshore workers at the local port, other employers, or any other entity which is familiar with the practices at the port. The documentation shall include a written summary of a survey of the experience of shipmasters who entered the local port in the previous year; or a letter, affidavit, or other written statement from an appropriate local port authority regarding the use of alien crewmembers to perform the longshore activity at the port in the previous year; or other documentation of comparable weight. Written statements from collective bargaining representatives and/or shipping agents with direct knowledge of practices regarding the use of alien crewmembers may also be pertinent. Such documentation shall accompany the Form ETA 9033, and any underlying documentation which supports the employer's burden of proof shall be maintained in the employer's records at the office of the U.S. agent as required under § _____.510(c)(1) of this part.

(Approved by the Office of Management and Budget under Control No. 1205–0309)

Alaska Exception

§ _____.530 Special provisions regarding the performance of longshore activities at locations in the State of Alaska.

Applicability. Section § _____.510 of this part shall not apply to longshore work performed at locations in the State of Alaska. The performance of longshore work by alien crewmembers at locations in the State of Alaska shall instead be governed by §§ _____.530 through _____.541. The use of alien crewmembers to perform longshore work in Alaska consisting of the use of an automated self-unloading conveyor belt or vacuum-actuated system on a vessel shall continue to be governed by the provisions of § _____.520 of this part, except that, if the Administrator finds, based on a preponderance of the evidence which may be submitted by any interested party, that an attestation is required because the performance of the particular activity of longshore work is not the prevailing practice at the location in the State of Alaska, or was during a strike or lockout or intended to influence an election of a bargaining representative for workers at that location, or if the Administrator issues a cease and desist order against use of the automated equipment without such an attestation, the required attestation shall be filed pursuant to the Alaska exception at §§ _____.530 through _____.541 and not the prevailing practice exception at § _____.510.

§ _____.531 Who may submit attestations for locations in Alaska?

In order to use alien crewmembers to perform longshore activities at a particular location in the State of Alaska an employer shall submit an attestation on Form ETA 9033–A. As noted at § _____.502, ''Definitions,'' for purposes of §§ _____.530 through _____.541, which govern the performance of longshore activities by alien crewmembers under the Alaska exception, ''employer'' includes any agent or representative designated by the employer. An employer may file a single attestation for multiple locations in the State of Alaska.

§ _____.532 Where and when should attestations be submitted for locations in Alaska?

(a) Attestations shall be submitted, by U.S. mail, private carrier, or facsimile transmission to the U.S. Department of Labor regional office of the Employment and Training Administration in Seattle, Washington. Except as provided in paragraph (b) of this section, attestations shall be received and date-stamped by the Department at least 30 calendar days prior to the date of the first performance of the longshore activity. The attestation shall be accepted for filing or returned by ETA in accordance with § _____.538 within 14 calendar days of the date received by ETA. An attestation which is accepted by ETA solely because it was not reviewed within 14 days is subject to subsequent invalidation pursuant to § _____.540 of this part. An employer filing an attestation shall have an agent or representative with a United States address. Such address shall be clearly indicated on the Form ETA 9033–A. In order to ensure that an attestation has been accepted for filing prior to the date of the first performance of the longshore activity, employers are advised to take mailing time into account to make sure that ETA receives the attestation at least 30 days prior to the first performance of the longshore activity.

(b) *Late filings.* ETA may accept for filing attestations received after the 30-day deadline where the employer could not have reasonably anticipated the need to file an attestation for the particular location at that time. When an employer states that it could not have reasonably anticipated the need to file the attestation at that time, it shall submit documentation to ETA to support such a claim. ETA shall then make a determination on the validity of the claim and shall accept the attestation for filing or return it in accordance with § _____.538 of this part. ETA in no case shall accept an attestation received less than 24 hours prior to the first performance of the activity.

§ _____.533 What should be submitted for locations in Alaska?

(a) *Form ETA 9033–A with accompanying documentation.* A completed and dated original Form ETA 9033–A, or facsimile transmission thereof, containing the required attestation elements and the original signature of the employer or the employer's agent or designated representative, along with two copies of the completed, signed, and dated Form ETA 9033–A shall be submitted to ETA. (If the attestation is submitted by facsimile transmission, the attestation containing the original signature shall be maintained at the U.S. business address of the employer's designated agent or representative). Copies of Form ETA 9033–A are available at all Department of Labor Regional offices and at the National office. In addition, the employer shall submit two sets of facts and evidence to show compliance

with the fourth attestation element at § _____.537 of this part. In the case of an investigation pursuant to subpart G of this part, the employer has the burden of proof to establish the validity of each attestation. The employer shall maintain in its records at the office of its U.S. agent, for a period of at least 3 years from the date of filing, sufficient documentation to meet its burden of proof, which shall at a minimum include the documentation described in §§ _____.530 through ————.541, and shall make the documents available to Department of Labor officials upon request. Whenever any document is submitted to a Federal agency or retained in the employer's records pursuant to this part, the document shall either be in the English language or shall be accompanied by a written translation into the English language certified by the translator as to the accuracy of the translation and his/her competency to translate.

(b) *Attestation elements.* The attestation elements referenced in §§ _____.534 through _____.537 of this part are mandated by Sec. 258(d)(1) of the Act (8 U.S.C. 1288(d)(1)). Section 258(d)(1) of the Act requires employers who seek to have alien crewmembers engage in longshore activity at locations in the State of Alaska to attest as follows:

(1) The employer will make a bona fide request for United States longshore workers who are qualified and available in sufficient numbers to perform the activity at the particular time and location from the parties to whom notice has been provided under § _____.537(a)(1) (ii) and (iii), except that:

(i) Wherever two or more contract stevedoring companies have signed a joint collective bargaining agreement with a single labor organization recognized as an exclusive bargaining representative of United States longshore workers within the meaning of the National Labor Relations Act (29 U.S.C. 141 *et seq.*), the employer may request longshore workers from only one such contract stevedoring company, and

(ii) A request for longshore workers to an operator of a private dock may be made only for longshore work to be performed at that dock and only if the operator meets the requirements of section 32 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 932);

(2) The employer will employ all United States longshore workers made available in response to the request made pursuant to § _____.534(a)(1) who are qualified and available in sufficient numbers and who are needed to perform the longshore activity at the particular time and location to which the employer has attested;

(3) The use of alien crewmembers for such activity is not intended or designed to influence an election of a bargaining representative for workers in the State of Alaska; and

(4) Notice of the attestation has been provided to:

(i) Labor organizations which have been recognized as exclusive bargaining representatives of United States longshore workers within the meaning of the National Labor Relations Act (29 U.S.C. 141 *et seq.*) and which make available or intend to make available workers to the particular location where the longshore work is to be performed;

(ii) Contract stevedoring companies which employ or intend to employ United States longshore workers at that location; and

(iii) Operators of private docks at which the employer will use longshore workers.

§ _____.534 The first attestation element for locations in Alaska: Bona fide request for dispatch of United States longshore workers.

(a) The first attestation element shall be satisfied when the employer signs Form ETA 9033–A, attesting that, before using alien crewmembers to perform longshore work during the validity period of the attestation, the employer will make a bona fide request for United States longshore workers who are qualified and available in sufficient numbers to perform the specified longshore activity from the parties to whom notice is provided under § _____.537(a)(1) (ii) and (iii). Although an employer is required to provide notification of filing to labor organizations recognized as exclusive bargaining representatives of United States longshore workers pursuant to § _____.537(a)(1)(i) of this part, an employer need not request dispatch of United States longshore workers directly from such parties. The requests for dispatch of United States longshore workers pursuant to this section shall be directed to contract stevedoring companies which employ or intend to employ United States longshore workers at that location, and to operators of private docks at which the employer will use longshore workers. An employer is not required to request dispatch of United States longshore workers from private dock operators or contract stevedoring companies which do not meet the requirements of section 32 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 932) or, in the case of contract stevedoring companies, which are not licensed to do business in the State of Alaska.

(1) Wherever two or more contract stevedoring companies have signed a joint collective bargaining agreement with a single qualified labor organization, the employer may request longshore workers from only one of such contract stevedoring companies. A qualified labor organization is one which has been recognized as an exclusive bargaining representative of United States longshore workers within the meaning of the National Labor Relations Act (29 U.S.C. 141 *et seq.*) and which makes available or intends to make available workers to the particular location where the longshore work is to be performed.

(2) A request for longshore workers to an operator of a private dock may be made only for longshore work to be performed at that dock.

(3) An employer shall not be required to request longshore workers from a party if that party has notified the employer in writing that it does not intend to make available United States longshore workers who are qualified and available in sufficient numbers to the time and location at which the longshore work is to be performed.

(4) A party that has provided such written notice to the employer under paragraph (a)(3) of this section may subsequently notify the employer in writing that it is prepared to make available United States longshore workers who are qualified and available in sufficient numbers to perform the longshore activity at the time and location where the longshore work is to be performed. In that event, the employer's obligations to that party under §§ _____.534 and _____.535 of this part shall recommence 60 days after its receipt of such notice.

(5) When a party has provided written notice to the employer under paragraph (a)(3) of this section that it does not intend to dispatch United States longshore workers to perform the longshore work attested to by the employer, such notice shall expire upon the earliest of the following events:

(i) When the terms of such notice specify an expiration date at which time the employer's obligation to that party under §§ _____.534 and _____.535 of this part shall recommence;

(ii) When retracted pursuant to paragraph (a)(4) of this section; or

(iii) Upon the expiration of the validity of the attestation.

(b) *Documentation.* To substantiate the requirement in paragraph (a) of this section, an employer shall develop and

maintain documentation to meet the employer's burden of proof under the first attestation element. The employer shall retain records of all requests for dispatch of United States longshore workers to perform the longshore work attested to. Such documentation shall consist of letters, telephone logs, facsimiles or other memoranda to show that, before using alien crewmembers to perform longshore work, the employer made a bona fide request for United States longshore workers who are qualified and available in sufficient numbers to perform the longshore activity. At a minimum, such documentation shall include the date the request was made, the name and telephone number of the particular individual(s) to whom the request for dispatch was directed, and the number and composition of full work units requested. Further, whenever any party has provided written notice to the employer under paragraph (a)(3) of this section, the employer shall retain the notice for the period of time specified in § _____.533 of this part, and, if appropriate, any subsequent notice by that party that it is prepared to make available United States longshore workers at the times and locations attested to.

§ _____.535 The second attestation element for locations in Alaska: Employment of United States longshore workers.

(a) The second attestation element shall be satisfied when the employer signs Form ETA 9033–A, attesting that during the validity period of the attestation, the employer will employ all United States longshore workers made available in response to the request for dispatch who, in compliance with applicable industry standards in the State of Alaska, including safety considerations, are qualified and available in sufficient numbers and are needed to perform the longshore activity at the particular time and location attested to.

(1) In no case shall an employer filing an attestation be required to hire less than a full work unit of United States longshore workers needed to perform the longshore activity nor be required to provide overnight accommodations for the longshore workers while employed. For purposes of this section, ''full work unit'' means the full complement of longshore workers needed to perform the longshore activity, as determined by industry standards in the State of Alaska, including safety considerations. Where the makeup of a full work unit is covered by one or more collective bargaining agreements in effect at the time and location where longshore work is to be performed, the provisions of such agreement(s) shall be deemed to be in conformance with industry standards in the State of Alaska.

(2) In no case shall an employer be required to provide transportation to the vessel where the longshore work is to be performed, except where:

(i) Surface transportation is available; for purposes of this section, ''surface transportation'' means a tugboat or other vessel which is appropriately insured, operated by licensed personnel, and capable of safely transporting U.S. longshore workers from shore to a vessel on which longshore work is to be performed;

(ii) Such transportation may be safely accomplished; and

(iii) (A) Travel time to the vessel does not exceed one-half hour each way; and

(B) Travel distance to the vessel from the point of embarkation does not exceed 5 miles; for purposes of this section, ''point of embarkation'' means a dock or landing at which U.S. longshore workers may be safely boarded for transport from shore to a vessel on which longshore work is to be performed; or

(C) In the cases of Wide Bay, Alaska, and Klawock/Craig, Alaska, travel time does not exceed 45 minutes each way and travel distance to the vessel from the point of embarkation does not exceed 7.5 miles, unless the party responding to the request for dispatch agrees to lesser time and distance specifications.

(3) If a United States longshore worker is capable of getting to and from the vessel where longshore work is to be performed when the vessel is beyond the time and distance limitations specified in paragraph (a)(2)(iii) of this section, and where all of the other criteria governing the employment of United States longshore workers under this subpart are met (*e.g.*, ''qualified and available in sufficient numbers''), the employer is still obligated to employ the worker to perform the longshore activity. In such instance, however, the employer shall not be required to provide such transportation nor to reimburse the longshore worker for the cost incurred in transport to and from the vessel.

(4) Where an employer is required to provide transportation to the vessel because it is within the time and distance limitations specified in (a)(2)(iii) of this section, the employer also shall be required to provide return transportation to the point of embarkation.

(b) *Documentation.* To substantiate the requirement in paragraph (a) of this section, an employer shall develop and maintain documentation to meet the employer's burden of proof. Such documentation shall include records of payments to contract stevedoring companies or private dock operators, payroll records for United States longshore workers employed, or other documentation to show clearly that the employer has met its obligation to employ all United States longshore workers made available in response to a request for dispatch who are qualified and available in sufficient numbers. The documentation shall specify the number of full work units employed pursuant to this section, the composition of such full work units (i.e., number of workers by job title), and the date(s) and location(s) where the longshore work was performed. The employer also shall develop and maintain documentation concerning the provision of transportation from the point of embarkation to the vessel on which longshore work is to be performed. Each time one or more United States longshore workers are dispatched in response to the request under § _____.534, the employer shall retain a written record of whether transportation to the vessel was provided and the time and distance from the point of embarkation to the vessel.

§ _____.536 The third attestation element for locations in Alaska: No intention or design to influence bargaining representative election.

(a) The employer shall attest that use of alien crewmembers to perform the longshore activity specified on the Form ETA 9033–A is not intended or designed to influence an election of a bargaining representative for workers in the State of Alaska.

(b) *Documentation.* The employer need not develop nor maintain documentation to substantiate the statement referenced in paragraph (a) of this section. In the case of an investigation, however, the employer has the burden of proof to show that the use of alien crewmembers to perform the longshore activity specified on the Form ETA 9033–A was not intended nor designed to influence an election of a bargaining representative for workers in the State of Alaska.

§ _____.537 The fourth attestation element for locations in Alaska: Notice of filing.

(a)(1) The employer shall attest that at the time of filing the attestation, notice of filing has been provided to:

(i) Labor organizations which have been recognized as exclusive bargaining representatives of United States

longshore workers within the meaning of the National Labor Relations Act (29 U.S.C. 141 *et seq.*) and which make available or intend to make available workers to the particular location where the longshore work is to be performed;

(ii) Contract stevedoring companies which employ or intend to employ United States longshore workers at the location where the longshore work is to be performed; and

(iii) Operators of private docks at which the employer will use longshore workers.

(2) The notices provided under paragraph (a)(1) of this section shall include a copy of the Form ETA 9033–A to be submitted to ETA, shall provide information concerning the availability of supporting documents for public examination at the national office of ETA, and shall include the following statement: ''Complaints alleging a misrepresentation of material facts in the attestation and/or failure to comply with the terms of the attestation may be filed with any office of the Wage and Hour Division of the United States Department of Labor.''

(b) The employer shall request a copy of the Certificate of Compliance issued by the district director of the Office of Workers' Compensation Programs under section 37 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 932) from the parties to whom notice is provided pursuant to paragraphs (a)(1)(ii) and (iii) of this section. An employer's obligation to make a bona fide request for dispatch of U.S. longshore workers under § _____.534 of this part before using alien crewmembers to perform the longshore work attested to shall commence upon receipt of the copy of the Certificate of Compliance.

(c) *Documentation.* The employer shall develop and maintain documentation sufficient to meet its burden of proving the validity of the statement referenced in paragraphs (a) and (b) of this section and attested to on the Form ETA 9033–A. Such documentation shall include a copy of the notices provided, as required by paragraph (a)(1) of this section, and shall be submitted to ETA along with the Form ETA 9033–A.

§ _____.538 Actions on attestations submitted for filing for locations in Alaska.

Once an attestation has been received from an employer, a determination shall be made by the regional certifying officer whether to accept the attestation for filing or return it. The regional certifying officer may request additional explanation and/or documentation from the employer in making this determination. An attestation which is properly filled out and which includes accompanying documentation for the requirement set forth at § _____.537 of this part shall be accepted for filing by ETA on the date it is signed by the regional certifying officer unless it falls within one of the categories set forth in paragraph (b) of this section. Once an attestation is accepted for filing, ETA shall then follow the procedures set forth in paragraph (a)(1) of this section. Upon acceptance of the employer's attestation by ETA, the attestation and accompanying documentation shall be forwarded to and be available for public examination at the ETA national office in a timely manner. ETA shall not consider information contesting an attestation received by ETA prior to the determination to accept or return the attestation for filing. Such information shall not be made a part of ETA's administrative record on the attestation, but shall be referred to ESA to be processed as a complaint pursuant to subpart G of this part if the attestation is accepted by ETA for filing.

(a) *Acceptance.* (1) If the attestation is properly filled out and includes accompanying documentation for the requirement set forth at § _____.537, and does not fall within one of the categories set forth at paragraph (b) of this section, ETA shall accept the attestation for filing, provide notification to the INS office having jurisdiction over the location where longshore work will be performed, and return to the employer, or the employer's agent or representative at a U.S. address, one copy of the attestation form submitted by the employer, with ETA's acceptance indicated thereon. Before using alien crewmembers to perform the longshore work attested to on Form ETA 9033–A, the employer shall make a bona fide request for and employ United States longshore workers who are qualified and available in sufficient numbers pursuant to §§ _____.534 and _____.535. Where such a request for dispatch of United States longshore workers is unsuccessful, either in whole or in part, any use of alien crewmembers to perform longshore activity shall be in accordance with INS regulations.

(2) DOL is not the guarantor of the accuracy, truthfulness or adequacy of an attestation accepted for filing.

(b) *Unacceptable attestations.* ETA shall not accept an attestation for filing and shall return such attestation to the employer, or the employer's agent or representative at a U.S. address, when any one of the following conditions exists:

(1) When the Form ETA 9033–A is not properly filled out. Examples of improperly filled out Form ETA 9033–A's include instances where the employer has neglected to check all the necessary boxes, where the employer has failed to include the name of any port, city, or other geographical reference point where longshore work is to be performed, or where the employer has failed to sign the attestation or to designate an agent in the United States.

(2) When the Form ETA 9033–A with accompanying documentation is not received by ETA at least 30 days prior to the first performance of the longshore activity, unless the employer is claiming that it could not have reasonably anticipated the need to file the attestation for that location at that time, and has included documentation which supports this contention, and ETA has found the claim to be valid.

(3) When the Form ETA 9033–A does not include accompanying documentation for the requirement set forth at § _____.537.

(4) When the accompanying documentation submitted by the employer and required by § _____.537, on its face, is inconsistent with that section. Examples of such a situation include an instance where the Form ETA 9033–A indicates that the longshore work will be performed at a particular private dock and the documentation required under the notice attestation element indicates that notice was provided to an operator of a different private dock, or where the longshore work is to be performed at a particular time and location in the State of Alaska and the notice of filing provided to qualified labor organizations and contract stevedoring companies indicates that the longshore work is to be performed at a different time and/or location.

(5) When the Administrator, Wage and Hour Division, has notified ETA, in writing, after an investigation pursuant to subpart G of this part, that a cease and desist order has been issued pursuant to subpart G of this part, with respect to the attesting employer's performance of longshore work at a particular location in the State of Alaska, in violation of a previously accepted attestation.

(6) When the Administrator, Wage and Hour Division, has notified ETA, in writing, after an investigation pursuant to subpart G of this part, that the particular employer has misrepresented or failed to comply with an attestation previously submitted and accepted for filing, but in no case for a period of more than one year after the date of the Administrator's notice and provided that INS has not advised ETA that the

prohibition is in effect for a lesser period.

(7) When the Administrator, Wage and Hour Division, has notified ETA, in writing, that the employer has failed to comply with any penalty, sanction, or other remedy assessed in a final agency action following an investigation by the Wage and Hour Division pursuant to subpart G of this part.

(c) *Resubmission.* If the attestation is not accepted for filing pursuant to paragraph (b) of this section, ETA shall return to the employer, or the employer's agent or representative, at a U.S. address, the attestation form and accompanying documentation submitted by the employer. ETA shall notify the employer, in writing, of the reason(s) that the attestation is unacceptable. When an attestation is found to be unacceptable pursuant to paragraph (b) (1), (2), (3), or (4) of this section, the employer may resubmit the corrected attestation with the proper documentation. When an attestation is found to be unacceptable pursuant to paragraph (b) (5), (6), or (7) of this section and returned, such action shall be the final decision of the Secretary of Labor.

§ _____.539 Effective date and validity of filed attestations for locations in Alaska.

An attestation is filed and effective as of the date it is accepted and signed by the regional certifying officer. Such attestation is valid for the 12-month period beginning on the date of acceptance for filing, unless suspended or invalidated pursuant to § _____.540 of this part. The filed attestation expires at the end of the 12-month period of validity.

§ _____.540 Suspension or invalidation of filed attestations for locations in Alaska.

Suspension or invalidation of an attestation may result from enforcement action(s) under subpart G of this part (*i.e.*, investigation(s) conducted by the Administrator or cease and desist order(s) issued by the Administrator regarding the employer's misrepresentation in or failure to carry out its attestation); or from a discovery by ETA that it made an error in accepting the attestation because such attestation falls within one of the categories set forth in § _____.538(b).

(a) *Result of Wage and Hour Division action.* Upon the determination of a violation under subpart G of this part, the Administrator shall, pursuant to § _____.665(b), notify the Attorney General of the violation and of the Administrator's notice to ETA.

(b) *Result of ETA action.* If, after accepting an attestation for filing, ETA finds that the attestation is unacceptable because it falls within one of the categories set forth at § _____.538(b) and, as a result, ETA suspends or invalidates the attestation, ETA shall notify the Attorney General of such suspension or invalidation and shall return a copy of the attestation form to the employer, or the employer's agent or representative at a U.S. address. ETA shall notify the employer, in writing, of the reason(s) that the attestation is suspended or invalidated.

§ _____.541 Withdrawal of accepted attestations for locations in Alaska.

(a) An employer who has submitted an attestation which has been accepted for filing may withdraw such attestation at any time before the 12-month period of its validity terminates, unless the Administrator has found reasonable cause under subpart G to commence an investigation of the particular attestation. Such withdrawal may be advisable, for example, when the employer learns that the country in which the vessel is registered and of which nationals of such country hold a majority of the ownership interest in the vessel has been removed from the non-reciprocity list (which means, for purposes of this section, *Prohibitions on longshore work by U.S. nationals; listing by country* at 22 CFR 89.1). In that event, an attestation would no longer be required under subpart F of this part, since upon being removed from the non-reciprocity list the performance of longshore work by alien crewmembers would be permitted under the reciprocity exception at sec. 258(e) of the Act (8 U.S.C. 1288(e)). Requests for withdrawals shall be in writing and shall be directed to the regional certifying officer.

(b) Withdrawal of an attestation shall not affect an employer's liability with respect to any failure to meet the conditions attested to which took place before the withdrawal, or for misrepresentations in an attestation. However, if an employer has not yet performed the longshore activities at the location(s) in question, the Administrator shall not find reasonable cause to investigate unless it is alleged, and there is reasonable cause to believe, that the employer has made misrepresentations in the attestation or documentation thereof, or that the employer has not in fact given the notice attested to.

Public Access

§ _____.550 Public access.

(a) *Public examination at ETA.* ETA shall make available for public examination in Washington, DC, a list of employers which have filed attestations under this subpart, and for each such employer, a copy of the employer's attestation and accompanying documentation it has received.

(b) *Notice to public.* ETA periodically shall publish a list in the Federal Register identifying under this subpart employers which have submitted attestations; employers which have attestations on file; and employers which have submitted attestations which have been found unacceptable for filing.

(Approved by the Office of Management and Budget under Control No. 1205–0309)

Appendix A to Subpart F—U.S. Seaports

The list of 224 seaports includes all major and most smaller ports serving ocean and Great Lakes commerce.

North Atlantic Range

Bucksport, ME
Eastport, ME
Portland, ME
Searsport, ME
Portsmouth, NH
Boston, MA
Fall River, MA
New Bedford, MA
Providence, RI
Bridgeport, CT
New Haven, CT
New London, CT
Albany, NY
New York, NY/NJ
Camden, NJ
Gloucester City, NJ
Paulsboro, NJ
Chester, PA
Marcus Hook, PA
Philadelphia, PA
Delaware City, DE
Wilmington, DE
Baltimore, MD
Cambridge, MD
Alexandria, VA
Chesapeake, VA
Hopewell, VA
Newport News, VA
Norfolk, VA
Portsmouth, VA
Richmond, VA

South Atlantic Range

Morehead City, NC
Southport, NC
Wilmington, NC
Charleston, SC
Georgetown, SC
Port Royal, SC
Brunswick, GA
Savannah, GA
St. Mary, GA
Cocoa, FL
Fernandina Beach, FL
Fort Lauderdale, FL
Fort Pierce, FL
Jacksonville, FL
Miami, FL
Palm Beach, FL
Port Canaveral, FL

Port Everglades, FL
Riviera, FL
Aguadilla, PR
Ceiba, PR
Guanica, PR
Guayanilla, PR
Humacao, PR
Jobos, PR
Mayaguez, PR
Ponce, PR
San Juan, PR
Vieques, PR
Yabucoa, PR
Alucroix, VI
Charlotte Amalie, VI
Christiansted, VI
Frederiksted, VI
Limetree Bay, VI

North Pacific Range

Astoria, OR
Bandon, OR
Columbia City, OR
Coos Bay, OR
Mapleton, OR
Newport, OR
Portland, OR
Rainier, OR
Reedsport, OR
St. Helens, OR
Toledo, OR
Anacortes, WA
Bellingham, WA
Edmonds (Edwards Point), WA
Everett, WA
Ferndale, WA
Friday Harbor, WA
Grays Harbor, WA
Kalama, WA
Longview, WA
Olympia, WA
Point Wells, WA
Portage, WA
Port Angeles, WA
Port Gamble, WA
Port Townsend, WA
Raymond, WA
Seattle, WA
Tacoma, WA
Vancouver, WA
Willapa Harbor, WA
Winslow, WA

Great Lakes Range

Duluth, MN
Silver Bay, MN
Green Bay, WI
Kenosha, WI
Manitowoc, WI
Milwaukee, WI
Sheboygan, WI
Superior, WI
Alpena, MI
Bay City, MI
Detroit, MI
De Tour Village, MI
Essexville, MI
Ferrysburg, MI
Grand Haven, MI
Marine City, MI
Muskegon, MI
Port Huron, MI
Presque Isle, MI
Rogers City, MI
Saginaw, MI
Sault Ste Marie, MI
Chicago, IL
Ashtabula, OH
Cincinnati, OH
Cleveland, OH
Conneaut, OH
Fairport, OH
Huron, OH
Lorain, OH
Sandusky, OH
Toledo, OH
Erie, PA
Buffalo, NY
Odgensburg, NY
Oswego, NY
Rochester, NY
Burns Harbor, IN
E. Chicago, IN
Gary, IN

Gulf Coast Range

Panama City, FL
Pensacola, FL
Port Manatee, FL
Port St. Joe, FL
Tampa, FL
Mobile, AL
Gulfport, MS
Pascagoula, MS
Baton Rouge, LA
Gretna, LA
Lake Charles, LA
Louisiana Offshore Oil Port, LA
New Orleans, LA
Beaumont, TX
Brownsville, TX
Corpus Christi, TX
Freeport, TX
Galveston, TX
Harbor Island, TX
Houston, TX
Orange, TX
Port Arthur, TX
Port Isabel, TX
Port Lavaca, TX
Port Neches, TX
Sabine, TX
Texas City, TX

South Pacific Range

Alameda, CA
Antioch, CA
Benicia, CA
Carlsbad, CA
Carpinteria, CA
Crockett, CA
El Segundo, CA
Eureka, CA
Estero Bay, CA
Gaviota, CA
Huntington Beach, CA
Long Beach, CA
Los Angeles, CA
Mandalay Beach, CA
Martinez, CA
Moss Landing, CA
Oakland, CA
Pittsburg, CA
Port Costa, CA
Port Hueneme, CA
Port San Luis, CA
Redwood City, CA
Richmond, CA
Sacramento, CA
San Diego, CA
San Francisco, CA
Selby, CA
Stockton, CA
Vallejo, CA
Ventura, CA
Barbers Point, HI
Hilo, HI
Honolulu, HI
Kahului, HI
Kaunakakai, HI
Kawaihae, HI
Nawiliwili, HI
Port Allen, HI

Subpart G—Enforcement of the Limitations Imposed on Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

§ _____.600 Enforcement Authority of Administrator, Wage and Hour Division.

(a) The Administrator shall perform all the Secretary's investigative and enforcement functions under section 258 of the INA (8 U.S.C. 1288) and subparts F and G of this part.

(b) The Administrator, pursuant to a complaint, shall conduct such investigations as may be appropriate and, in connection therewith, enter and inspect such places and such records (and make transcriptions or copies thereof), question such persons and gather such information as deemed necessary by the Administrator to determine compliance regarding the matters which are the subject of the investigation.

(c) An employer being investigated shall make available to the Administrator such records, information, persons, and places as the Administrator deems appropriate to copy, transcribe, question, or inspect. No employer subject to the provisions of section 258 of the INA (8 U.S.C. 1288) and subparts F and G of this part shall interfere with any official of the Department of Labor performing an investigation, inspection or law enforcement function pursuant to 8 U.S.C. 1288 or subpart F or G of this part. Any such interference shall be a violation of the attestation and subparts F and G of this part, and the Administrator may take such further actions as the Administrator considers appropriate. (Note: Federal criminal statutes prohibit certain interference with a Federal officer in the performance of official duties. 18 U.S.C. 111 and 18 U.S.C. 1114.)

(d)(1) An employer subject to subparts F and G of this part shall at all times cooperate in administrative and enforcement proceedings. No employer shall intimidate, threaten, restrain, coerce, blacklist, discharge, retaliate, or in any manner discriminate against any person because such person has:

(i) Filed a complaint or appeal under or related to section 258 of the INA (8

U.S.C. 1288) or subpart F or G of this part;

(ii) Testified or is about to testify in any proceeding under or related to section 258 of the INA (8 U.S.C. 1288) or subpart F or G of this part;

(iii) Exercised or asserted on behalf of himself or herself or others any right or protection afforded by section 258 of the INA (8 U.S.C. 1288) or subpart F or G of this part.

(iv) Consulted with an employee of a legal assistance program or an attorney on matters related to section 258 of the Act or to subpart F or G of this part or any other DOL regulation promulgated pursuant to 8 U.S.C. 1288.

(2) In the event of such intimidation or restraint as are described in paragraph (d)(1) of this section, the conduct shall be a violation of the attestation and subparts F and G of this part, and the Administrator may take such further actions as the Administrator considers appropriate.

(e) The Administrator shall, to the extent possible under existing law, protect the confidentiality of any person who provides information to the Department in confidence in the course of an investigation or otherwise under subpart F or G of this part. However, confidentiality will not be afforded to the complainant or to information provided by the complainant.

§ _____.605 Complaints and investigative procedures.

(a) The Administrator, through an investigation, shall determine whether a basis exists to make a finding that:

(1) An attesting employer has—

(i) Failed to meet conditions attested to; or

(ii) Misrepresented a material fact in an attestation.

(Note: Federal criminal statutes provide penalties of up to $10,000 and/or imprisonment of up to 5 years for knowing and willful submission of false statements to the Federal Government. 18 U.S.C. 1001; see also 18 U.S.C. 1546.); or

(2) In the case of an employer operating under the automated vessel exception to the prohibition on utilizing alien crewmembers to perform longshore activity(ies) at a U.S. port, the employer—

(i) Is utilizing alien crewmember(s) to perform longshore activity(ies) at a port where the prevailing practice has not been to use such workers for such activity(ies); or

(ii) Is utilizing alien crewmember(s) to perform longshore activities:

(A) During a strike or lockout in the course of a labor dispute at the U.S. port; and/or

(B) With intent or design to influence an election of a bargaining representative for workers at the U.S. port; or

(3) An employer failed to comply in any other manner with the provisions of subpart F or G of this part.

(b) Any aggrieved person or organization may file a complaint of a violation of the provisions of subpart F or G of this part.

(1) No particular form of complaint is required, except that the complaint shall be written or, if oral, shall be reduced to writing by the Wage and Hour Division official who receives the complaint.

(2) The complaint shall set forth sufficient facts for the Administrator to determine—

(i) Whether, in the case of an attesting employer, there is reasonable cause to believe that particular part or parts of the attestation or regulations have been violated; or

(ii) Whether, in the case of an employer claiming the automated vessel exception, the preponderance of the evidence submitted by any interested party shows that conditions exist that would require the employer to file an attestation.

(3) The complaint may be submitted to any local Wage and Hour Division office; the addresses of such offices are found in local telephone directories. The office or person receiving such a complaint shall refer it to the office of the Wage and Hour Division administering the area in which the reported violation is alleged to have occurred.

(c) The Administrator shall determine whether there is reasonable cause to believe that the complaint warrants investigation. If the Administrator determines that the complaint fails to present reasonable cause for an investigation, the Administrator shall so notify the complainant, who may submit a new complaint, with such additional information as may be necessary. There shall be no hearing pursuant to § _____.625 for the Administrator's determination not to conduct an investigation. If the Administrator determines that an investigation on the complaint is warranted, the investigation shall be conducted and a determination issued within 180 calendar days of the Administrator's receipt of the complaint, or later for good cause shown.

(d) In conducting an investigation, the Administrator may consider and make part of the investigation file any evidence or materials that have been compiled in any previous investigation regarding the same or a closely related matter.

(e) In conducting an investigation under an attestation, the Administrator shall take into consideration the employer's burden to provide facts and evidence to establish the matters asserted. In conducting an investigation regarding an employer's eligibility for the automated vessel exception, the Administrator shall not impose the burden of proof on the employer, but shall consider all evidence from any interested party in determining whether the employer is not eligible for the exception.

(f) In an investigation regarding the use of alien crewmembers to perform longshore activity(ies) in a U.S. port (whether by an attesting employer or by an employer claiming the automated vessel exception), the Administrator shall accept as conclusive proof a previous Departmental determination, published in the Federal Register pursuant to § _____.670, establishing that such use of alien crewmembers is not the prevailing practice for the activity(ies) and U.S. port at issue. The Administrator shall give appropriate weight to a previous Departmental determination published in the Federal Register pursuant to § _____.670, establishing that at the time of such determination, such use of alien crewmembers was the prevailing practice for the activity(ies) and U.S. port at issue.

(g) When an investigation has been conducted, the Administrator shall, within the time period specified in paragraph (c) of this section, issue a written determination as to whether a basis exists to make a finding stated in paragraph (a) of this section. The determination shall be issued and an opportunity for a hearing shall be afforded in accordance with the procedures specified in § _____.625(d) of this part.

§ _____.610 Automated vessel exception to prohibition on utilization of alien crewmember(s) to perform longshore activity(ies) at a U.S. port.

(a) The Act establishes a rebuttable presumption that the prevailing practice in U.S. ports is for automated vessels (*i.e.,* vessels equipped with automated self- unloading conveyor belts or vacuum-actuated systems) to use alien crewmembers to perform longshore activity(ies) through the use of the self-unloading equipment. An employer claiming the automated vessel exception does not have the burden of establishing eligibility for the exception.

(b) In the event of a complaint asserting that an employer claiming the automated vessel exception is not eligible for such exception, the

Administrator shall determine whether the preponderance of the evidence submitted by any interested party shows that:

(1) It is not the prevailing practice at the U.S. port to use alien crewmember(s) to perform the longshore activity(ies) through the use of the self-unloading equipment; or

(2) The employer is using alien crewmembers to perform longshore activity(ies)—

(i) During a strike or lockout in the course of a labor dispute at the U.S. port; and/or

(ii) With intent or design to influence an election of a bargaining representative for workers at the U.S. port.

(c) In making the prevailing practice determination required by paragraph (b)(1) of this section, the Administrator shall determine whether, in the 12-month period preceding the date of the Administrator's receipt of the complaint, one of the following conditions existed:

(1) Over fifty percent of the automated vessels docking at the port used alien crewmembers for the activity (for purposes of this paragraph (c)(1) of this section, a vessel shall be counted each time it docks at the particular port); or

(2) Alien crewmembers made up over fifty percent of the workers who performed the activity with respect to such automated vessels.

(d) An interested party, complaining that the automated vessel exception is not applicable to a particular employer, shall provide to the Administrator evidence such as:

(1) A written summary of a survey of the experience of masters of automated vessels which entered the local port in the previous year, describing the practice in the port as to the use of alien crewmembers;

(2) A letter, affidavit, or other written statement from an appropriate local port authority regarding the use of alien crewmembers to perform the longshore activity at the port in the previous year;

(3) Written statements from collective bargaining representatives and/or shipping agents with direct knowledge of practices regarding the use of alien crewmembers at the port in the previous year.

§ _____.615 Cease and desist order.

(a) If the Administrator determines that reasonable cause exists to conduct an investigation with respect to an attestation, the complainant may request that the Administrator enter a cease and desist order against the employer against whom the complaint is lodged.

(1) The request for a cease and desist order may be filed along with the complaint, or may be filed subsequently. The request, including all accompanying documents, shall be filed in duplicate with the same Wage and Hour Division office that received the complaint.

(2) No particular form is prescribed for a request for a cease and desist order pursuant to this paragraph (a). However, any such request shall:

(i) Be dated;

(ii) Be typewritten or legibly written;

(iii) Specify the attestation provision(s) with respect to which the employer allegedly failed to comply and/or submitted misrepresentation(s) of material fact(s);

(iv) Be accompanied by evidence to substantiate the allegation(s) of noncompliance and/or misrepresentation;

(v) Be signed by the complaining party making the request or by the authorized representative of such party;

(vi) Include the address at which such complaining party or authorized representative desires to receive further communications relating thereto.

(3) Upon receipt of a request for a cease and desist order, the Administrator shall promptly notify the employer of the request. The Administrator's notice shall:

(i) Inform the employer that it may respond to the request and meet with a Wage and Hour Division official within 14 calendar days of the date of the notice;

(ii) Be served upon the employer by facsimile transmission, in person, or by certified or regular mail, at the address of the U.S. agent stated on the employer's attestation;

(iii) Be accompanied by copies of the complaint, the request for a cease and desist order, the evidence submitted by the complainant, and any evidence from other investigation(s) of the same or a closely related matter which the Administrator may incorporate into the record. (Any such evidence from other investigation(s) shall also be made available for examination by the complaining party at the Wage and Hour Division office which issued the notice.)

(4) No particular form is prescribed for the employer's response to the complaining party's request for a cease and desist order under this paragraph (a), however, any such response shall:

(i) Be dated;

(ii) Be submitted by facsimile transmission, in person, by certified or regular mail, or by courier service to the Wage and Hour Division office which issued the notice of the request;

(iii) Be received by the appropriate Wage and Hour Division office no later than 14 calendar days from the date of the notice of the request;

(iv) Be typewritten or legibly written;

(v) Explain, in any detail desired by the employer, the employer's grounds or reasons as to why the Administrator should deny the requested cease and desist order;

(vi) Be accompanied by evidence to substantiate the employer's grounds or reasons as to why the Administrator should deny the requested cease and desist order;

(vii) Specify whether the employer desires an informal meeting with a Wage and Hour Division official;

(viii) Be signed by the employer or its authorized representative; and

(ix) Include the address at which the employer or its authorized representative desires to receive further communications relating thereto, if such address is different from the address of the U.S. agent stated on the attestation.

(5) In the event the employer requests a meeting with a Wage and Hour Division official, the Administrator shall provide the employer and the complaining party, or their authorized representatives, an opportunity for such a meeting to present their views regarding the evidence and arguments submitted by the parties. This shall be an informal meeting, not subject to any procedural rules. The meeting shall be held within the 14 calendar days permitted for the employer's response to the request for the cease and desist order, and shall be held at a time and place set by the Wage and Hour Division official, who shall notify the parties.

(6) After receipt of the employer's timely response and after any informal meeting which may have been held with the parties, the Administrator shall promptly issue a written determination, either denying the request or issuing a cease and desist order. In making the determination, the Administrator shall consider all the evidence submitted, including any evidence from the same or a closely related matter which the Administrator has incorporated into the record and provided to the employer. If the Administrator determines that the complaining party's position is supported by a preponderance of the evidence submitted, the Administrator shall order that the employer cease the activities specified in the determination, until the completion of the Administrator's investigation and any subsequent proceedings pursuant to § _____.625 of this part, unless the prohibition is lifted by subsequent order of the Administrator because it is later determined that the employer's position was correct. While the cease and desist order is in effect, ETA shall suspend the

subject attestation, either in whole or in part, and shall not accept any subsequent attestation from the employer for the activity(ies) and U.S. port or location in the State of Alaska at issue.

(7) The Administrator's cease and desist order shall be served on the employer at the address of its designated U.S. based representative or at the address specified in the employer's response, by facsimile transmission, personal service, or certified mail.

(b) If the Administrator determines that reasonable cause exists to conduct an investigation with respect to a complaint that a non-attesting employer is not entitled to the automated vessel exception to the requirement for the filing of an attestation, a complaining party may request that the Administrator enter a cease and desist order against the employer against whom the complaint is lodged.

(1) The request for a cease and desist order may be filed along with the complaint, or may be filed subsequently. The request, including all accompanying documents, shall be filed in duplicate with the same Wage and Hour Division office that received the complaint.

(2) No particular form is prescribed for a request for a cease and desist order pursuant to this paragraph. However, any such request shall:

(i) Be dated;

(ii) Be typewritten or legibly written;

(iii) Specify the circumstances which allegedly require that the employer be denied the use of the automated vessel exception;

(iv) Be accompanied by evidence to substantiate the allegation(s);

(v) Be signed by the complaining party making the request or by the authorized representative of such party; and

(vi) Include the address at which such complaining party or authorized representative desires to receive further communications relating thereto.

(3) Upon receipt of a request for a cease and desist order, the Administrator shall notify the employer of the request. The Administrator's notice shall:

(i) Inform the employer that it may respond to the request and meet with a Wage and Hour Division official within 14 calendar days of the date of the notice;

(ii) Be served upon the employer by facsimile transmission, in person, or by certified or regular mail, at the employer's last known address; and

(iii) Be accompanied by copies of the complaint, the request for a cease and desist order, the evidence submitted by the complainant, and any evidence from other investigation(s) of the same or a closely related matter which the Administrator may incorporate into the record. (Any such evidence from other investigation(s) shall also be made available for examination by the complaining party at the Wage and Hour Division office which issued the notice.)

(4) No particular form is prescribed for the employer's response to the complaining party's request for a cease and desist order under this paragraph (b). However, any such response shall:

(i) Be dated;

(ii) Be submitted by facsimile transmission, in person, by certified or regular mail, or by courier service to the Wage and Hour Division office which issued the notice of the request;

(iii) Be received by the appropriate Wage and Hour Division office no later than 14 calendar days from the date of the notice of the request;

(iv) Be typewritten or legibly written;

(v) Explain, in any detail desired by the employer, the employer's grounds or reasons as to why the Administrator should deny the requested cease and desist order;

(vi) Be accompanied by evidence to substantiate the employer's grounds or reasons as to why the Administrator should deny the requested cease and desist order;

(vii) Specify whether the employer desires an informal meeting with a Wage and Hour Division official;

(viii) Be signed by the employer or its authorized representative; and

(ix) Include the address at which the employer or its authorized representative desires to receive further communications relating thereto.

(5) In the event the employer requests a meeting with a Wage and Hour Division official, the Administrator shall provide the employer and the complaining party, or their authorized representatives, an opportunity for such a meeting to present their views regarding the evidence and arguments submitted by the parties. This shall be an informal meeting, not subject to any procedural rules. The meeting shall be held within the 14 calendar days permitted for the employer's response to the request for the cease and desist order, and shall be held at a time and place set by the Wage and Hour Division official, who shall notify the parties.

(6) After receipt of the employer's timely response and after any informal meeting which may have been held with the parties, the Administrator shall promptly issue a written determination, either denying the request or issuing a cease and desist order. If the Administrator determines that the complaining party's position is supported by a preponderance of the evidence submitted, the Administrator shall order that the employer cease the use of alien crewmembers to perform the longshore activity(ies) specified in the order. In making the determination, the Administrator shall consider all the evidence submitted, including any evidence from the same or a closely related matter which the Administrator has incorporated into the record and provided to the employer. The order shall remain in effect until the completion of the investigation and any subsequent hearing proceedings pursuant to § _____.625 of this part, unless the employer files and maintains on file with ETA an attestation pursuant to § _____.520 of this part or unless the prohibition is lifted by subsequent order of the Administrator because it is later determined that the employer's position was correct.

(7) The Administrator's cease and desist order shall be served on the employer or its designated representative by facsimile transmission, personal service, or by certified mail at the address specified in the employer's response or, if no such address was specified, at the employer's last known address.

§ _____.620. Civil money penalties and other remedies.

(a) The Administrator may assess a civil money penalty not to exceed $5,000 for each alien crewmember with respect to whom there has been a violation of the attestation or subpart F or G of this part. The Administrator may also impose appropriate remedy(ies).

(b) In determining the amount of civil money penalty to be assessed, the Administrator shall consider the type of violation committed and other relevant factors. The factors which may be considered include, but are not limited to, the following:

(1) Previous history of violation, or violations, by the employer under the Act and subpart F or G of this part;

(2) The number of workers affected by the violation or violations;

(3) The gravity of the violation or violations;

(4) Efforts made by the violator in good faith to comply with the provisions of 8 U.S.C. 1288(c) and subparts F and G of this part;

(5) The violator's explanation of the violation or violations;

(6) The violator's commitment to future compliance; and/or

(7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss,

potential injury or adverse effect with respect to other parties.

(c) The civil money penalty, and any other remedy determined by the Administrator to be appropriate, are immediately due for payment or performance upon the assessment by the Administrator, or the decision by an administrative law judge where a hearing is requested, or the decision by the Secretary where review is granted. The employer shall remit the amount of the civil money penalty, by certified check or money order made payable to the order of ''Wage and Hour Division, Labor.'' The remittance shall be delivered or mailed to the Wage and Hour Division office for the area in which the violations occurred. The performance of any other remedy prescribed by the Administrator shall follow procedures established by the Administrator. The employer's failure to pay the civil money penalty, or to perform any other remedy prescribed by the Administrator, shall result in the rejection by ETA of any future attestation submitted by the employer, until such payment or performance is accomplished.

§ _____.625 Written notice, service and Federal Register publication of Administrator's determination.

(a) The Administrator's determination, issued pursuant to § _____.605 of this part, shall be served on the complainant, the employer, and other known interested parties by personal service or by certified mail at the parties' last known addresses. Where service by certified mail is not accepted by the party, the Administrator may exercise discretion to serve the determination by regular mail.

(b) Where the Administrator determines the prevailing practice regarding the use of alien crewmember(s) to perform longshore activity(ies) in a U.S. port (whether the Administrator's investigation involves an employer operating under an attestation, or under the automated vessel exception), the Administrator shall, simultaneously with issuance of the determination, publish in the Federal Register a notice of the determination. The notice shall identify the activity(ies), the U.S. port, and the prevailing practice regarding the use of alien crewmembers. The notice shall also inform interested parties that they may request a hearing pursuant to § _____.630 of this part, within 15 days of the date of the determination.

(c) The Administrator shall file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the complaint and the Administrator's determination.

(d) The Administrator's written determination required by § _____.605 of this part shall:

(1) Set forth the determination of the Administrator and the reason or reasons therefor, and in the case of a finding of violation(s) by an attesting employer, prescribe any remedies, including the amount of any civil money penalties assessed and the reason therefor, and/or any other remedies required for compliance with the employer's attestation.

(2) Inform the interested parties that they may request a hearing pursuant to § _____.625 of this part.

(3) Inform the interested parties that in the absence of a timely request for a hearing, received by the Chief Administrative Law Judge within 15 calendar days of the date of the determination, the determination of the Administrator shall become final and not appealable.

(4) Set forth the procedure for requesting a hearing, and give the address of the Chief Administrative Law Judge (with whom the request must be filed) and the representative(s) of the Solicitor of Labor (upon whom copies of the request must be served).

(5) Inform the parties that, pursuant to § _____.665, the Administrator shall notify ETA and the Attorney General of the occurrence of a violation by the attesting employer or of the non-attesting employer's ineligibility for the automated vessel exception.

§ _____.630 Request for hearing.

(a) Any interested party desiring to request an administrative hearing on a determination issued pursuant to §§ _____.605 and _____.625 of this part shall make such request in writing to the Chief Administrative Law Judge at the address stated in the notice of determination.

(b) Interested parties may request a hearing in the following circumstances:

(1) The complainant or any other interested party may request a hearing where the Administrator determines, after investigation, that there is no basis for a finding that an attesting employer has committed violation(s) or that the employer is eligible for the automated vessel exception. In such a proceeding, the requesting party and the employer shall be parties; the Administrator may intervene as a party or appear as *amicus curiae* at any time in the proceeding, at the Administrator's discretion.

(2) The employer or any other interested party may request a hearing where the Administrator determines, after investigation, that there is a basis for a finding that an attesting employer has committed violation(s) or that a non- attesting employer is not eligible for the automated vessel exception. In such a proceeding, the Administrator and the employer shall be parties.

(c) No particular form is prescribed for any request for hearing permitted by this section. However, any such request shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the notice of determination giving rise to such request;

(4) State the specific reason or reasons why the party requesting the hearing believes such determination is in error;

(5) Be signed by the party making the request or by an authorized representative of such party; and

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto.

(d) The request for such hearing must be received by the Chief Administrative Law Judge, at the address stated in the Administrator's notice of determination, no later than 15 calendar days after the date of the determination. An interested party that fails to meet this 15-day deadline for requesting a hearing may thereafter participate in the proceedings only by consent of the administrative law judge, either through intervention as a party pursuant to 29 CFR 18.10 (b) through (d) or through participation as an amicus curiae pursuant to 18 CFR 18.12.

(e) The request may be filed in person, by facsimile transmission, by certified or regular mail, or by courier service. For the requesting party's protection, if the request is filed by mail, it should be by certified mail. If the request is filed by facsimile transmission, the original of the request, signed by the requestor or authorized representative, shall be filed within ten days.

(f) Copies of the request for a hearing shall be sent by the requestor to the Wage and Hour Division official who issued the Administrator's notice of determination, to the representative(s) of the Solicitor of Labor identified in the notice of determination, and to all known interested parties.

§ _____.635 Rules of practice for administrative law judge proceedings.

(a) Except as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the ''Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges'' established by the Secretary at 29 CFR part 18 shall apply to

administrative proceedings under this subpart.

(b) As provided in the Administrative Procedure Act, 5 U.S.C. 556, any oral or documentary evidence may be received in proceedings under this part. The Federal Rules of Evidence and subpart B of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (29 CFR part 18, subpart B) shall not apply, but principles designed to ensure production of relevant and probative evidence shall guide the admission of evidence. The administrative law judge may exclude evidence which is immaterial, irrelevant, or unduly repetitive.

§ _____.640 Service and computation of time.

(a) Under this subpart, a party may serve any pleading or document by regular mail. Service on a party is complete upon mailing to the last known address or, in the case of the attesting employer, to the employer's designated representative in the U.S. No additional time for filing or response is authorized where service is by mail. In the interest of expeditious proceedings, the administrative law judge may direct the parties to serve pleadings or documents by a method other than regular mail.

(b) Two (2) copies of all pleadings and other documents in any administrative law judge proceeding shall be served on the attorneys for the Administrator. One copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, and one copy on the attorney representing the Administrator in the proceeding.

(c) Time will be computed beginning with the day following the action and includes the last day of the period unless it is a Saturday, Sunday, or federally-observed holiday, in which case the time period includes the next business day.

§ _____.645 Administrative law judge proceedings.

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § _____.630 of this part, the Chief Administrative Law Judge shall promptly appoint an administrative law judge to hear the case.

(b) Within seven calendar days following the assignment of the case, the administrative law judge shall notify all interested parties of the date, time and place of the hearing. All parties shall be given at least fourteen calendar days' notice of such hearing.

(c) The date of the hearing shall be not more than 60 calendar days from the date of the Administrator's determination. Because of the time constraints imposed by the Act, no requests for postponement shall be granted except for compelling reasons. Even if such reasons are shown, no extension of the hearing date beyond 60 days from the date of the Administrator's determination shall be granted except by consent of all the parties to the proceeding.

(d) The administrative law judge may prescribe a schedule by which the parties are permitted to file a prehearing brief or other written statement of fact or law. Any such brief or statement shall be served upon each other party in accordance with § _____.640 of this part. Posthearing briefs will not be permitted except at the request of the administrative law judge. When permitted, any such brief shall be limited to the issue or issues specified by the administrative law judge, shall be due within the time prescribed by the administrative law judge, and shall be served on each other party in accordance with § _____.640 of this part.

(e) In reaching a decision, the administrative law judge shall, in accordance with the Act, impose the following burden of proof—

(1) The attesting employer shall have the burden of producing facts and evidence to establish the matters required by the attestation at issue;

(2) The burden of proof as to the applicability of the automated vessel exception shall be on the party to the hearing who is asserting that the employer is not eligible for the exception.

(f) The administrative law judge proceeding shall not be an appeal or review of the Administrator's ruling on a request for a cease and desist order pursuant to § _____.615.

§ _____.650 Decision and order of administrative law judge.

(a) Within 90 calendar days after receipt of the transcript of the hearing, the administrative law judge shall issue a decision. If any party desires review of the decision, including judicial review, a petition for Secretary's review thereof shall be filed as provided in § _____.655 of this subpart. If a petition for review is filed, the decision of the administrative law judge shall be inoperative unless and until the Secretary issues an order affirming the decision, or, unless and until 30 calendar days have passed after the Secretary's receipt of the petition for review and the Secretary has not issued notice to the parties that the Secretary will review the administrative law judge's decision.

(b) The decision of the administrative law judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. The decision shall also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the Administrator; the reason or reasons for such order shall be stated in the decision. The administrative law judge shall not render determinations as to the legality of a regulatory provision or the constitutionality of a statutory provision.

(c) The decision shall be served on all parties in person or by certified or regular mail.

§ _____.655 Secretary's review of administrative law judge's decision.

(a) The Administrator or any interested party desiring review of the decision and order of an administrative law judge shall petition the Secretary to review the decision and order. To be effective, such petition shall be received by the Secretary within 30 calendar days of the date of the decision and order. Copies of the petition shall be served on all parties and on the administrative law judge.

(b) No particular form is prescribed for any petition for Secretary's review permitted by this subpart. However, any such petition shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the administrative law judge decision and order giving rise to such petition;

(4) State the specific reason or reasons why the party petitioning for review believes such decision and order are in error;

(5) Be signed by the party filing the petition or by an authorized representative of such party;

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto; and

(7) Attach copies of the administrative law judge's decision and order, and any other record documents which would assist the Secretary in determining whether review is warranted.

(c) Whenever the Secretary determines to review the decision and order of an administrative law judge, a notice of the Secretary's determination shall be served upon the administrative law judge and upon all parties to the

proceeding within 30 calendar days after the Secretary's receipt of the petition for review.

(d) Upon receipt of the Secretary's notice, the Office of Administrative Law Judges shall within fifteen calendar days forward the complete hearing record to the Secretary.

(e) The Secretary's notice may specify:

(1) The issue or issues to be reviewed;

(2) The form in which submissions shall be made by the parties (*e.g.,* briefs); and

(3) The time within which such submissions shall be made.

(f) All documents submitted to the Secretary shall be filed with the Secretary of Labor, U.S. Department of Labor, Washington, DC 20210, Attention: Executive Director, Office of Administrative Appeals, room S–4309. An original and two copies of all documents shall be filed. Documents are not deemed filed with the Secretary until actually received by the Secretary. All documents, including documents filed by mail, shall be received by the Secretary either on or before the due date.

(g) Copies of all documents filed with the Secretary shall be served upon all other parties involved in the proceeding. Service upon the Administrator shall be in accordance with § _____.640(b) of this part.

(h) The Secretary's final decision shall be issued within 180 calendar days from the date of the notice of intent to review. The Secretary's decision shall be served upon all parties and the administrative law judge.

(i) Upon issuance of the Secretary's decision, the Secretary shall transmit the entire record to the Chief Administrative Law Judge for custody pursuant to § _____.660 of this part.

§ _____.660 Administrative record.

The official record of every completed administrative hearing procedure provided by subparts F and G of this part shall be maintained and filed under the custody and control of the Chief Administrative Law Judge. Upon receipt of a complaint seeking review of the final agency action in a United States District Court, the Chief Administrative Law Judge shall certify the official record and shall transmit such record to the clerk of the court.

§ _____.665 Notice to the Attorney General and the Employment and Training Administration.

(a) The Administrator shall promptly notify the Attorney General and ETA of the entry of a cease and desist order pursuant to § _____.615 of this part. The order shall remain in effect until the completion of the Administrator's investigation and any subsequent proceedings pursuant to § _____.630 of this part, unless the Administrator notifies the Attorney General and ETA of the entry of a subsequent order lifting the prohibition.

(1) The Attorney General, upon receipt of notification from the Administrator that a cease and desist order has been entered against an employer:

(i) Shall not permit the vessels owned or chartered by the attesting employer to use alien crewmembers to perform the longshore activity(ies) at the port or location in the State of Alaska specified in the cease and desist order; and

(ii) Shall, in the case of an employer seeking to utilize the automated vessel exception, require that such employer not use alien crewmembers to perform the longshore activity(ies) at the port or location in the State of Alaska specified in the cease and desist order, without having on file with ETA an attestation pursuant to § _____.520 of this part.

(2) ETA, upon receipt of the Administrator's notice shall, in the case of an attesting employer, suspend the employer's attestation, either in whole or in part, for the activity(ies) and port or location in the State of Alaska specified in the cease and desist order.

(b) The Administrator shall notify the Attorney General and ETA of the final determination of a violation by an attesting employer or of the ineligibility of an employer for the automated vessel exception, upon the earliest of the following events:

(1) Where the Administrator determines that there is a basis for a finding of violation by an attesting employer or a finding of nonapplicability of the automated vessel exception, and no timely request for hearing is made pursuant to § _____.630 of this part;

(2) Where, after a hearing, the administrative law judge issues a decision and order finding a violation by an attesting employer or finding inapplicable the automated vessel exception, and no timely petition for review to the Secretary is made pursuant to § _____.655 of this part; or

(3) Where a petition for review is taken from an administrative law judge's decision finding a violation or finding inapplicable the automated vessel exception, and the Secretary either declines within thirty days to entertain the appeal, pursuant to § _____.655(c) of this part, or the Secretary affirms the administrative law judge's determination; or

(4) Where the administrative law judge finds that there was no violation by an attesting employer or that the automated vessel exception does apply, and the Secretary, upon review, issues a decision pursuant to § _____.655 of this part, holding that a violation was committed by an attesting employer or holding that the automated vessel exception does not apply.

(c) The Attorney General, upon receipt of notification from the Administrator pursuant to paragraph (b) of this section:

(1) Shall not permit the vessels owned or chartered by the attesting employer to enter any port of the U.S. for a period of up to one year;

(2) Shall, in the case of an employer determined to be ineligible for the automated vessel exception, thereafter require that such employer not use alien crewmembers(s) to perform the longshore activity(ies) at the specified port or location in the State of Alaska without having on file with ETA an attestation pursuant to § _____.520 of this part; and

(3) Shall, in the event that the Administrator's notice constitutes a conclusive determination (pursuant to § _____.670) that the prevailing practice at a particular U.S. port does not permit the use of nonimmigrant alien crewmembers for particular longshore activity(ies), thereafter permit no employer to use alien crewmembers for the particular longshore activity(ies) at that port.

(d) ETA, upon receipt of the Administrator's notice pursuant to paragraph (b) of this section:

(1) Shall, in the case of an attesting employer, suspend the employer's attestation, either in whole or in part, for the port or location at issue and for any other U.S. port, and shall not accept for filing any attestation submitted by the employer for a period of 12 months or for a shorter period if such is specified for that employer by the Attorney General; and

(2) Shall, if the Administrator's notice constitutes a conclusive determination (pursuant to § _____.670) that the prevailing practice at a particular U.S. port does not permit the use of alien crewmembers for the longshore activity(ies), thereafter accept no attestation under the prevailing practice exception on Form ETA 9033 from any employer for the performance of the activity(ies) at that port, and shall invalidate any current attestation under the prevailing practice exception on Form ETA 9033 for any employer for the performance of the activity(ies) at that port.

§ _____.670 Federal Register notice of determination of prevailing practice.

(a) Pursuant to § _____.625(b), the Administrator shall publish in the Federal Register a notice of the Administrator's determination of any investigation regarding the prevailing practice for the use of alien crewmembers for particular longshore activity(ies) in a particular U.S. port (whether under an attestation or under the automated vessel exception). Where the Administrator has determined that the prevailing practice in that U.S. port does not permit such use of alien crewmembers, and no timely request for a hearing is filed pursuant to § _____.630, the Administrator's determination shall be the conclusive determination for purposes of the Act and subparts F and G of this part; the Attorney General and ETA shall, upon notice from the Administrator, take the actions specified in § _____.665. Where the Administrator has determined that the prevailing practice in that U.S. port at the time of the investigation permits such use of alien crewmembers, the Administrator shall, in any subsequent investigation, give that determination appropriate weight, unless the determination is reversed in proceedings under § _____.630 or § _____.655.

(b) Where an interested party, pursuant to § _____.630, requests a hearing on the Administrator's determination, the Administrator shall, upon the issuance of the decision of the administrative law judge, publish in the Federal Register a notice of the judge's decision as to the prevailing practice for the longshore activity(ies) and U.S. port at issue, if the administrative law judge:

(1) Reversed the determination of the Administrator published in the Federal Register pursuant to paragraph (a) of this section; or

(2) Determines that the prevailing practice for the particular activity in the port does not permit the use of alien crewmembers.

(c) If the administrative law judge determines that the prevailing practice in that port does not permit such use of alien crewmembers, the judge's decision shall be the conclusive determination for purposes of the Act and subparts F and G of this part (unless and until reversed by the Secretary on discretionary review pursuant to § _____.655). The Attorney General and ETA shall upon notice from the Administrator, take the actions specified in § _____.665.

(d) In the event that the Secretary, upon discretionary review pursuant to § _____.655, issues a decision that reverses the administrative law judge on a matter on which the Administrator has published notices in the Federal Register pursuant to paragraphs (a) and (b) of this section, the Administrator shall publish in the Federal Register a notice of the Secretary's decision and shall notify the Attorney General and ETA.

(1) Where the Secretary reverses the administrative law judge and determines that, contrary to the judge's decision, the prevailing practice for the longshore activity(ies) in the U.S. port at issue does not permit the use of alien crewmembers, the Secretary's decision shall be the conclusive determination for purposes of the Act and subparts F and G of this part. Upon notice from the Administrator, the Attorney General and ETA shall take the actions specified in § _____.665.

(2) Where the Secretary reverses the administrative law judge and determines that, contrary to the judge's decision, the use of alien crewmembers is permitted by the prevailing practice for the longshore activity(ies) in the U.S. port at issue, the judge's decision shall no longer have the conclusive effect specified in paragraph (b) of this section. Upon notice from the Administrator, the Attorney General and ETA shall cease the actions specified in § _____.665.

§ _____.675 Non-applicability of the Equal Access to Justice Act.

A proceeding under subpart G of this part is not subject to the Equal Access to Justice Act, as amended, 5 U.S.C. 504. In such a proceeding, the administrative law judge shall have no authority to award attorney fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act.

Adoption of the Joint Interim Final Rule

The agency specific adoption of the joint interim final rule, which appears at the end of the common preamble, appears below:

TITLE 20—EMPLOYEES' BENEFITS

CHAPTER V—EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR

Accordingly, for the reasons set forth in the preamble, Chapter V of Title 20, Code of Federal Regulations, is amended as follows:

PART 655—TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

1. The Authority citation for part 655 is revised to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H) (i) and (ii), 1182 (m) and (n), 1184, 1188, and 1288 (c) and (d); 29 U.S.C. 49 *et seq.;* sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); Pub. L. 103–206, 107 Stat 2419; and 8 CFR 214.2(h)(4)(i).

Section 655.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188; 29 U.S.C. 49 *et seq.;* and 8 CFR 214.2(h)(4)(i).

Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184; 29 U.S.C. 49 *et seq.;* and 8 CFR 214.2(h)(4)(i).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188; and 29 U.S.C. 49 *et seq.*

Subparts D and E issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 *et seq.;* and sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note).

Subparts F and G issued under 8 U.S.C. 1184 and 1288 (c) and (d); 29 U.S.C. 49 *et seq.*; and Pub. L. 103–206, 107 Stat 2419.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184; 29 U.S.C. 49 *et seq.;* and sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1182 note).

Subparts J and K issued under 29 U.S.C. 49 *et seq.;* and sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

2. Part 655 is amended by revising subparts F and G to read as set forth in the joint interim final rule at the end of the common preamble.

Subpart F—Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

General Provisions

Sec.

655.500 Purpose, procedure and applicability of subparts F and G of this part.
655.501 Overview of responsibilities.
655.502 Definitions.
655.510 Employer attestations.
655.520 Special provisions regarding automated vessels.

Alaska Exception

655.530 Special provisions regarding the performance of longshore activities at locations in the State of Alaska.
655.531 Who may submit attestations for locations in Alaska?
655.532 Where and when should attestations be submitted for locations in Alaska?
655.533 What should be submitted for locations in Alaska?
655.534 The first attestation element for locations in Alaska: Bona fide request for dispatch of United States longshore workers.
655.535 The second attestation element for locations in Alaska: Employment of United States longshore workers.
655.536 The third attestation element for locations in Alaska: No intention or design to influence bargaining representative election.

655.537 The fourth attestation element for locations in Alaska: Notice of filing.
655.538 Actions on attestations submitted for filing for locations in Alaska.
655.539 Effective date and validity of filed attestations for locations in Alaska.
655.540 Suspension or invalidation of filed attestations for locations in Alaska.
655.541 Withdrawal of accepted attestations for locations in Alaska.

Public Access

655.550 Public access.

Appendix A to Subpart F—U.S. Seaports

Subpart G—Enforcement of the Limitations Imposed on Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

Sec.
655.600 Enforcement authority of Administrator, Wage and Hour Division.
655.605 Complaints and investigative procedures.
655.610 Automated vessel exception to prohibition on utilization of alien crewmembers to perform longshore activity(ies) at a U.S. port.
655.615 Cease and desist order.
655.620 Civil money penalties and other remedies.
655.625 Written notice, service and Federal Register publication of Administrator's determination.
655.630 Request for hearing.
655.635 Rules of practice for administrative law judge proceedings.
655.640 Service and computation of time.
655.645 Administrative law judge proceedings.
655.650 Decision and order of administrative law judge.
655.655 Secretary's review of administrative law judge's decision.
655.660 Administrative record.
655.665 Notice to the Attorney General and the Employment and Training Administration.
655.670 Federal Register notice of determination of prevailing practice.
655.675 Non-applicability of the Equal Access to Justice Act.

Signed at Washington, DC, this 6th day of January, 1995.

Robert B. Reich,

Secretary of Labor.

TITLE 29—LABOR

CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

For the reasons set forth in the preamble, part 506 of Title 29, Code of Federal Regulations, is amended as follows:

PART 506—ATTESTATIONS BY EMPLOYERS USING ALIEN CREWMEMBERS FOR LONGSHORE ACTIVITIES IN U.S. PORTS

1. The authority citation for part 506 is revised to read as follows:

Authority: 8 U.S.C. 1288 (c) and (d).

2. Part 506 is amended by revising subparts F and G to read as set forth in the joint interim final rule at the end of the common preamble.

Subpart F—Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

General Provisions

Sec.
506.500 Purpose, procedure and applicability of subparts F and G of this part.
506.501 Overview of responsibilities.
506.502 Definitions.
506.510 Employer attestations.
506.520 Special provisions regarding automated vessels.

Alaska Exception

506.530 Special provisions regarding the performance of longshore activities at locations in the State of Alaska.
506.531 Who may submit attestations for locations in Alaska?
506.532 Where and when should attestations be submitted for locations in Alaska?
506.533 What should be submitted for locations in Alaska?
506.534 The first attestation element for locations in Alaska: Bona fide request for dispatch of United States longshore workers.
506.535 The second attestation element for locations in Alaska: Employment of United States longshore workers.
506.536 The third attestation element for locations in Alaska: No intention or design to influence bargaining representative election.
506.537 The fourth attestation element for locations in Alaska: Notice of filing.
506.538 Actions on attestations submitted for filing for locations in Alaska.
506.539 Effective date and validity of filed attestations for locations in Alaska.
506.540 Suspension or invalidation of filed attestations for locations in Alaska.
506.541 Withdrawal of accepted attestations for locations in Alaska.

Public Access

506.550 Public access.

Appendix A to Subpart F—U.S. Seaports

Subpart G—Enforcement of the Limitations Imposed on Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

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506.615 Cease and desist order.
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506.660 Administrative record.
506.665 Notice to the Attorney General and the Employment and Training Administration.
506.670 Federal Register notice of determination of prevailing practice.
506.675 Non-applicability of the Equal Access to Justice Act.

Signed at Washington, DC, this 6th day of January, 1995.

Robert B. Reich,

Secretary of Labor.

Appendix B (Not To Be Codified in the CFR): Form ETA 9033–A

Printed below is a copy of Form ETA 9033–A.

BILLING CODES 4510–30–P, 4510–27–P

Attestation by Employers Using Alien Crewmembers for Longshore Activities at Locations in the State of Alaska

U.S. Department of Labor
Employment and Training Administration
U.S. Employment Service

1. Full Legal Name of Company	5. Name of U.S. Agent	OMB Approval No. 1205-0352 Expires: 09/30/97
2. Headquarters Address (No., St., City, Town, State, ZIP Code, Country)	6. U.S. Business Address of Agent (No., St., City, State, ZIP Code)	
3. Telephone (Area Code and Number)	7. Telephone (Area Code and Number)	
4. Name of Chief Executive Officer	Fax (Area Code and Number)	

8. EMPLOYER ATTESTATION (Use attachment if additional space is needed or multiple locations are covered.)

(a) It is anticipated that longshore activities will be performed at the following times and locations in the State of Alaska (Check appropriate box(es) below for each activity of longshore work to be performed):

First Performance of Activity (Month/Day/Year) _____ Location (name of port, city, or other geographical reference point) _____

☐ (i) Loading cargo ☐ (ii) Unloading cargo
☐ (iii) Operation of cargo-related equipment ☐ (iv) Handling of mooring lines

☐ (b) Before using alien crewmen to perform any longshore activity, a bona fide request will be made to the parties to whom notice has been provided under item 8(e)(ii) and (iii) below, for United States longshore workers who are qualified and available in sufficient numbers to perform the longshore activity at the particular time and location, except that:

(i) wherever two or more contract stevedoring companies have signed a joint collective bargaining agreement with a labor organization described in 8(e)(i) below, the request for longshore workers may be made to only one such contract stevedoring company, and

(ii) a request for longshore workers to an operator of a private dock may be made only for longshore work to be performed at that dock and only if the operator meets the requirements of section 32 of the Longshore and Harbor Workers' Compensation Act.

☐ (c) All United States longshore workers who are made available in response to the request for dispatch as attested at item 8(b) above and who are qualified, available in sufficient numbers, and needed to perform the longshore activity at the particular time and location, will be employed to perform such activity.

☐ (d) The use of alien crewmembers in my employ to perform any longshore activity is not intended or designed to influence an election of a bargaining representative for workers in the State of Alaska.

☐ (e) As of this date, notice of this attestation has been provided to (include copies of actual notices):

(i) Labor organizations which have been recognized as exclusive bargaining representatives of United States longshore workers and which make available or intend to make available longshore workers to the particular location(s) where the longshore work is be performed;

(ii) Contract stevedoring companies which employ or intend to employ United States longshore workers at the particular location(s) where the longshore work is to be performed; and

(iii) Operators of private docks at which workers in my employ will perform any longshore activity.

9. DECLARATION OF EMPLOYER: Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the information provided on this form and accompanying documentation is true and correct. In addition, I declare that I will comply with the Department of Labor regulations governing this program and, in particular, that I will make this attestation, supporting documentation, and other records, files and documents available to officials of the Department, upon such official's request, during any investigation under this attestation or the immigration and Nationality Act.

_____ _____
Signature of Chief Executive Officer (or U.S. Agent or Representative) Date

FOR U.S. GOVERNMENT AGENCY USE ONLY: By virtue of my signature below, I acknowledge that this attestation is accepted for filing on _____ (date) and will be valid for the longshore activities at locations in the State of Alaska herein attested to from _____ (beginning date) through _____ (date twelve months from beginning date).

_____ _____
Signature of Authorized DOL Official ETA Case No.

Subsequent DOL action: Suspended _____ Invalidated _____ Withdrawn _____

The Department of Labor is not the guarantor of the accuracy, truthfulness or adequacy of an attestation accepted for filing.

DO NOT SEND THE COMPLETED FORM TO EITHER OF THESE OFFICES

ETA 9033-A (Dec. 1994)

ATTESTATION BY EMPLOYERS USING ALIEN CREWMEMBERS FOR LONGSHORE ACTIVITIES AT LOCATIONS IN THE STATE OF ALASKA

IMPORTANT: READ CAREFULLY BEFORE COMPLETING FORM

Submit the completed original Form ETA 9033-A with accompanying documentation along with two copies of the form and accompanying documentation. Attestations must be received by the Department of Labor no later than 30 days prior to the first performance of the longshore activity (or anytime up to 24 hours before the first performance of the activity, upon a showing that the employer could not have reasonably anticipated the need to file an attestation for that location at the time). Attestations which are filed less than 30 days prior to the first performance of the longshore activity must include supporting documentation to show that the employer could not have reasonably anticipated the need to file an attestation for that location at that time. Attestations must be submitted to the ETA regional office at 1111 3rd Ave., Suite 900, Seattle, WA 98101.

To knowingly furnish any false information in the preparation of this form and any supporting documentation thereto, or to aid, abet or counsel another to do so is a felony, punishable by $10,000 fine or five years in the penitentiary, or both (18 U.S.C. 1001). Other penalties apply as well to fraud and misuse of this immigration document (18 U.S.C. 1546) and to perjury with respect to this form (18 U.S.C. 1546 and 1621).

Print legibly in ink or use a typewriter. Sign and date one form in original signature. Citations below to "regulations" are citations to the identical provisions at 20 CFR Part 655, Subparts F and G, and at 29 CFR Part 506, Subparts F and G.

Item 1. Full Legal Name of Company. Enter full legal name of business, firm or organization, or, if an individual, enter name used for legal purposes on documents.

Item 2. Headquarters Address. Self Explanatory.

Item 3. Telephone Number. Include area code or international calling code.

Item 4. Name of Chief Executive Officer. Self explanatory.

Item 5. Name of U.S. Agent. Self explanatory.

Item 6. U.S. Business Address of Agent. This address must be in the U.S.

Item 7. Telephone Number. Include fax number, if available.

Item 8. Employer Attestations. An employer must attest to the conditions listed in elements (b) through (e). The attestation will only be accepted for filing if the required documentation supporting element 8(e) is attached to the Form ETA 9033-A. See § ____ .537 of the regulations for guidance on the documentation that must be attached to the Form ETA 9033-A to support element 8(e). The employer must check the appropriate box(es) 8(a)(i) through (iv) for each of the particular activities of longshore work to be performed.

Item 8(b). Bona Fide Request for Dispatch of U.S. Longshore Workers. The employer must attest that, before using alien crewmen to perform longshore work, he will make a bona fide request for U.S. longshore workers who are qualified and available in sufficient numbers to perform the activity at the particular times and locations specified. The request for dispatch must be directed to the parties to whom notice of filing is provided under attestation element 8(e)(ii) and (iii). Wherever two or more contract stevedoring companies have signed a joint collective bargaining agreement with a labor organization described in attestation element 8(e)(i), the employer may request longshore workers from only one of such contract stevedoring company. A request for longshore workers to an operator of a private dock may be made only for longshore work to be performed at that dock and only if the operator meets the requirements of section 32 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 932). See § ____ .534 of the regulations for a detailed explanation of this attestation element.

Item 8(c). Employment of all Qualified U.S. Longshore Workers Made Available in Sufficient Numbers. The employer must attest that all U.S. longshore workers made available in response to the request for dispatch under the first attestation element, item 8(b), who are qualified and available in sufficient numbers and who are needed to perform the longshore activity at the particular times and locations specified will be employed to perform such activity. See § ____ .535 of the regulations for a detailed explanation of this attestation element.

Item 8(d). No Intention or Design to Influence Bargaining Representative Election. The employer must attest the use of alien crewmembers to perform longshore activities is not intended or designed to influence an election for a bargaining representative for longshore workers in the State of Alaska. See § ____ .536 of the regulations for a detailed explanation of this attestation element.

Item 8(e). Notice of Filing. The employer must attest that at the time of filing the attestation, notice of filing has been provided to labor organization which have been recognized as exclusive bargaining representatives of U.S. longshore workers and which make available or intend to make available workers to the particular locations where the longshore work is to be performed. Notice must also be provided to contract stevedoring companies which employ or intend to employ U.S. longshore workers at those locations, and to operators of private docks at which the employer will use longshore workers. See § ____ .537 of the regulations for a detailed explanation of this attestation element.

Item 9. Declaration of Employer. One copy of this form must bear the original signature of the chief executive officer (or the chief executive officer's U.S. agent or designated representative) unless filing by facsimile transmission. See § ____ .533(2) of the regulations if filing by facsimile transmission. By signing this form, the chief executive officer is attesting to the conditions listed in items 8(b) through (e) and to the accuracy of the information provided elsewhere on the form and in the supporting documentation. False statements are subject to Federal criminal penalties, as stated above.

If the attestation bears the necessary entries of information and documentation, the Department of Labor may accept the attestation for filing and shall document such acceptance on each of the three Form ETA 9033-A's submitted. A copy of the attestation form indicating the Department's acceptance, or notification of nonacceptance, will be returned to the employer. A copy of this attestation, along with accompanying documentation, will be available for public inspection at the Division of Foreign Labor Certifications, United States Employment Service, Room N-4456, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

[FR Doc. 95–964 Filed 1–18–95; 8:45 am]
BILLING CODES 4510–30–C, 4510–27–C

Federal Register

Thursday
January 19, 1995

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Parts 53 and 54

Standards for Grades of Slaughter Cattle and Standards for Grades of Carcass Beef; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 53 and 54

[No. LS–94–009]

Standards for Grades of Slaughter Cattle and Standards for Grades of Carcass Beef

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document would revise the official U.S. standards for grades of carcass beef and the related standards for grades of slaughter cattle and remove ''B'' maturity (approximately 30–42 months of age) carcasses with small or slight marbling degrees from the Choice and Select grades and include them in the Standard grade. This action is being taken because carcasses with these characteristics have been shown to be quite variable and often unacceptable in palatability, therefore contributing significantly to inconsistent palatability of beef in the Choice and Select grades. The standards for grades of slaughter cattle, which are based on the beef carcass grades, would be revised to reflect the changes proposed for the beef carcass grade standards. This proposed change should serve to strengthen the competitive position of beef products through increased quality and consistency, and thus be in the best interests of cattle producers. Also it should provide the consumer with an improved product through greater consistency and predictability in the Choice and Select grades.

DATES: Comments must be received by April 19, 1995. See Supplementary Information for date of public hearing session.

ADDRESSEES: Written comments to: Livestock and Meat Standardization Branch, Livestock and Seed Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2603 South Building, P.O. Box 96456, Washington, DC 20090–6456. See Supplementary Information for location of public hearing session.

FOR FURTHER INFORMATION CONTACT: Herbert C. Abraham, Chief, Livestock and Meat Standardization Branch, Livestock and Seed Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Washington, DC 20090–6456, 202/720–4486.

SUPPLEMENTARY INFORMATION:

Comments

In order that all those affected have ample opportunity to comment, written views, data, or arguments will be received on the proposal. All persons who desire to submit written data, views, or comments on this proposal are invited to submit such material, in duplicate, to the Livestock and Meat Standardization Branch (see **ADDRESSEES**) on or before April 19, 1995. Comments must be signed and include the address of the sender and should bear a reference to the date and page number of this issue of the Federal Register. The comments should include information which explains and supports the sender's views. All written submissions will be made available for public inspection at the office of the Livestock and Meat Standardization Branch, Livestock and Seed Division, AMS, USDA, Room 2603 South Building, 14th and Independence Avenue, SW., Washington, DC 20250, during regular office hours.

Executive Order 12866

The Department of Agriculture is issuing this proposed rule in conformance with Executive Order 12866.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

The Administrator, Agricultural Marketing Service (AMS), has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, P.L. 96–345 (5 U.S.C. 601). The use of the beef carcass and slaughter cattle grade standards is voluntary, and they are applied equally to all size entities covered by these regulations. Further, this action does not impose any new requirements or costs, it only modifies the grade requirements to reflect modern production practices. Any needed management changes may be done by all entities in response to market signals. The proposed action is expected to benefit the industry by improving consumer satisfaction with beef products, and there should be no significant negative impact on returns.

Background

Federal beef grading is a voluntary fee for service program, provided under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*). A primary purpose of grades is to divide the population of cattle and beef into uniform groups (of similar quality, yield, value, etc.), in order to facilitate marketing. Grades provide a simple, effective means of describing product that is easily understood by both buyers and sellers. By identifying separate and distinct segments of a commodity, grades enable buyers to obtain that particular portion of the entire range of a commodity that meets their individual needs. At the same time, grades are important in transmitting information to cattlemen so that more informed production decisions can be made. For example, this market preference for a particular grade of beef is communicated to cattle producers so they can adjust their production accordingly.

When beef is voluntarily graded, the official grade consists of a quality grade and/or a yield grade. The quality grades are intended to identify differences in the palatability or eating satisfaction of cooked beef principally through the characteristics of marbling and maturity. The principal official USDA quality grades for young (maturity groups A and B) cattle and carcasses are Prime, Choice, Select, and Standard.

In developing the grades, the Department has followed the philosophy that, to be effective, beef grades should sort the supply of beef carcasses into homogeneous groups having a sufficiently narrow range of grade-determining factors so that carcasses within a given grade are essentially interchangeable. Another primary objective is to provide as uniform and consistent product as possible within a given grade.

The Department recognizes that the beef standards cannot be static—they must be dynamic to be of greatest value to the various users. In keeping with this philosophy, the Department has made changes in the standards as necessary to meet the changing needs of users of the system. Recommendations for changes in the standards may be initiated by the Department or by interested parties. When it appears that a change would improve the standards, generally a proposal is published and interested parties are provided an opportunity to comment. In such instances, a decision regarding adoption of the proposed change is made only

after receipt and analysis of all comments.

In June 1994, the National Cattlemen's Association (NCA) petitioned USDA to modify the beef quality grade standards by removing ''B'' maturity carcasses with small and slight marbling scores from the Choice and Select grades and include such carcasses in the Standard grade. This action was a recommendation of a NCA Carcass Quality Task Force which worked for approximately 1½ years to develop specific recommendations for the beef industry to win the ''war on fat,'' while enhancing beef quality and consistency. The task force contained broad representation from the cattle production and feeding sectors, as well as packers, purveyors, and retailers. Several actions were recommended, but only this particular one related directly to the beef grade standards.

The NCA petition stated the modern beef animal today is typically marketed at 12 to 15 months of age when fed as calves and 18 to 24 months of age when fed as yearlings. These modern animals are the result of progressive breeders and feeders who produce faster growing, more efficient cattle. If these animals receive proper care and nutrition, they should have no difficulty producing carcasses in the ''A'' maturity group. Carcasses of ''B'' maturity are typically from cattle which are 30 to 42 months of age when marketed.

Research conducted for the Department by Texas A&M University (Smith *et al.,* 1984, Journal of Food Quality) using trained taste panels indicates that nearly 50 percent of the loin steaks from ''B'' maturity carcasses with slight marbling, and over 30 percent of the loin steaks from ''B'' maturity carcasses with small marbling, are less than satisfactory. These carcasses add significantly to the variability of palatability within the Select and Choice grades and they do not epitomize the ''modern beef carcass.'' Permitting ''B'' maturity carcasses with a small and slight degree of marbling to be graded Choice and Select when they have been proven to be considerably more variable in palatability than ''A'' maturity carcasses with slight and small marbling creates no incentives for the industry to decrease production and marketing of cattle which do not conform to consumer demand for quality and consistency.

Although these cattle make up only a small percentage of the U.S. fed beef supply, their variability can contribute significantly to overall consumer satisfaction with beef. According to a national beef quality audit conducted in 1991, up to 4.8 percent of the fed beef supply was ''B'' maturity in the slight and small marbling groups. The beef industry processes approximately 26 million fed beef carcasses annually. The possible 4.8 percent affected by the proposed grade change would be 1.3 million carcasses. It is estimated that 42 percent of these carcasses would have less than desirable palatability. This means over 500,000 unsatisfactory carcasses could be removed from the Choice and Select grades, which should have a very important, positive effect on consumer satisfaction with beef. The NCA believes producers can and will respond quickly to the market signals that these ''older'' animals should be marketed at an age at which they can produce ''A'' maturity carcasses. Such a shift in management should effectively eliminate most ''B'' maturity carcasses from the beef supply without affecting overall economic returns to the industry.

The proposed change should also have a positive effect on the marketing of Select grade beef. It will not only make the palatability more consistent, but it will also make the nutritional profile more consistent by removing from the Select grade ''B'' maturity carcasses which have higher amounts of fat due to the higher marbling level (small in ''B'' maturity compared to slight in ''A'' maturity) required for these carcasses to qualify for Select. This makes the Select grade more uniform in both fat content and consistency of palatability and should further its acceptance by consumers who desire a leaner alternative to Choice. Since the name change from Good to Select in 1987 (52 FR 35679), the percentage of Select graded beef has steadily increased, and in FY 93, 33.6 percent of graded steer and heifer beef was Select.

The NCA recommendation stated it was submitted to aid the beef industry in producing a higher quality, more consistent beef product under the Choice and Select grades. Eliminating ''B'' maturity carcasses will allow market forces to further discourage the production of cattle which do not conform to consumers desire for tender, tasty beef products. The modern beef animal raised and processed using modern breeding and feeding technology should have no trouble producing a carcass of ''A'' maturity. The U.S. beef quality grades of Choice and Select are recognized throughout the world as the highest quality beef. The small suggested modification to the standards will increase consumer confidence in using those grades to identify quality and consistency.

The Department has carefully evaluated the recommendation and concurs that the suggested changes should improve consumer satisfaction with the Choice and Select grades and thus strengthen the competitive position of beef in the marketplace while aiding the beef industry in its objective of providing more palatable, consistent beef to consumers.

Therefore, it is proposed that the beef carcass standards be revised to remove ''B'' maturity (approximately 30–42 months of age) carcasses with small or slight marbling degrees from the Choice and Select grades and reduce their grade to Standard.

The standards for grades of slaughter cattle, which are based on the beef carcass grade standards, would be revised to reflect the changes proposed for the beef carcass grade standards. Grades of slaughter cattle are intended to be directly related to the grades of the carcasses they produce.

List of Subjects

7 CFR Part 53

Cattle, Hogs, Livestock, Sheep.

7 CFR Part 54

Food grades and standards, Food labeling, Meat and meat products.

For the reasons set forth in the preamble, 7 CFR Part 53 and Part 54 are proposed to be amended as follows:

PART 53—LIVESTOCK (GRADING, CERTIFICATION, AND STANDARDS)

1. The authority citation for Part 53 is revised to read as follows:

Authority: 7 U.S.C. 1622 and 1624.

2. In § 53.203, paragraph (b)(3) is revised to read as follows:

§ 53.203 Application of standards for grades of slaughter cattle.

* * * * *

(b) * * *

(3) The approximate maximum age limitation for the Prime, Choice, and Standard grades of steers, heifers, and cows is 42 months. The maximum age limitation for the Select grade for steers, heifers, and cows is approximately 30 months. The Commercial grade for steers, heifers, and cows includes only cattle over approximately 42 months. There are no age limitations for the Utility, Cutter, and Canner grades of steers, heifers, and cows. The maximum age limitation for all grades of bullocks is approximately 24 months.[1]

[1] Maximum maturity limits for bullock carcasses are the same as those described in the beef carcass grade standards for steers, heifers, and cows at

Continued

* * * * *

3. In § 53.204, paragraph (c)(1) is revised to read as follows:

§ 53.204 Specifications for official U.S. standards for grades of slaughter steers, heifers, and cows (quality).

* * * * *

(c) *Select.* (1) The Select grade is limited to steers, heifers, and cows with a maximum age limitation of approximately 30 months. Slaughter cattle possessing the minimum qualifications for Select have a thin fat covering which is largely restricted to the back and loin. The brisket, flanks, twist, and cod or udder are slightly full and the muscling is slightly firm.

* * * * *

about 30 months of age. However, bullocks develop carcass indicators of maturity at younger chronological ages than steers. Therefore, the approximate age at which bullocks develop carcass indicators of maximum maturity is shown herein as 24 months rather than 30 months.

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

1. The authority citation for Part 54 is revised to read as follows:

Authority: 7 U.S.C. 1622 and 1624.

2. Section 54.104 is amended by removing the word ''Select,'' in paragraph (n), revising the third and fifth sentences in paragraph (o), and revising Figure 1 to read as follows:

§ 54.104 Application of standards for grades of carcass beef.

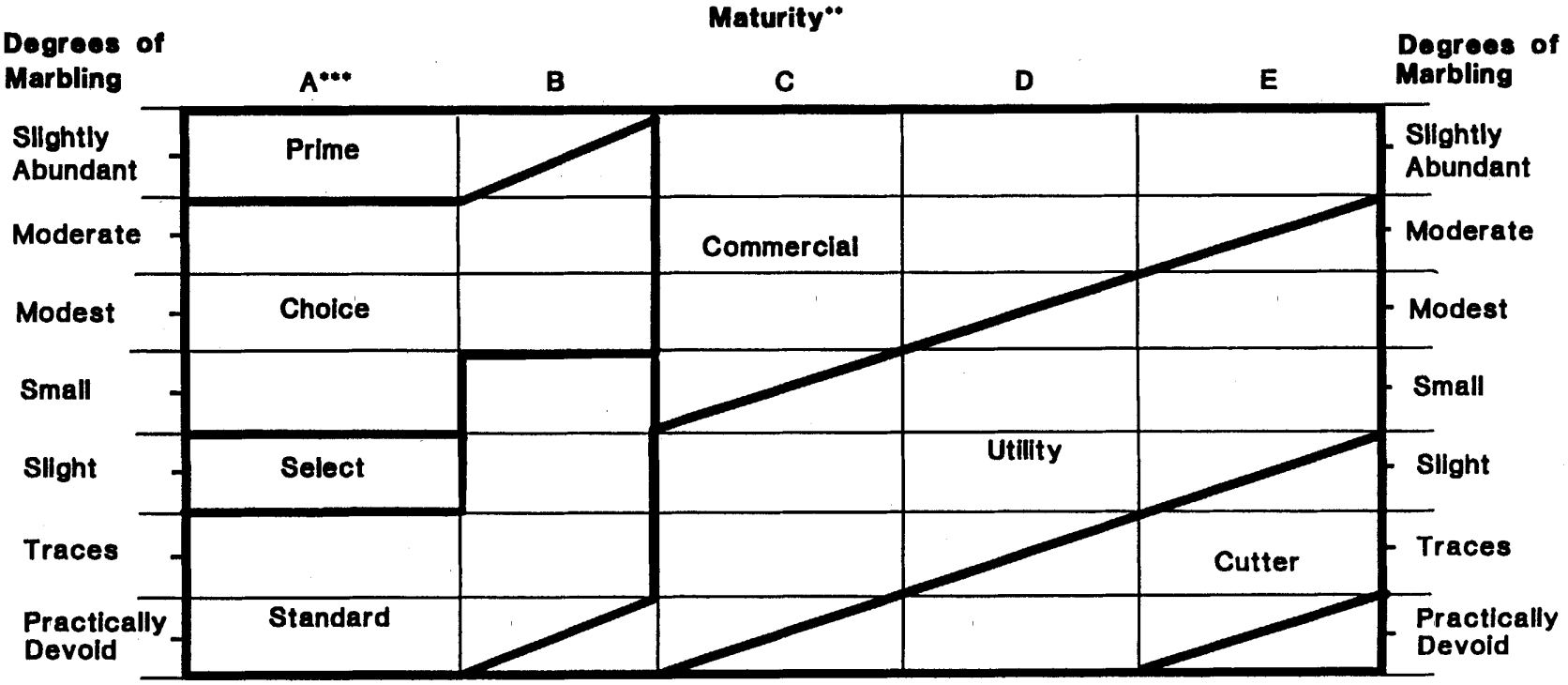
* * * * *

(o) * * * The Prime, Choice, Select, and Standard grades are restricted to beef from young cattle; the Commercial grade is restricted to beef from cattle too mature for Prime, Choice, and Standard; and the Utility, Cutter, and Canner grades may include beef from animals of all ages. * * * Except for the youngest maturity group and the Choice grade in the second maturity group, within any specified grade, the requirements for marbling increase progressively with evidences of advancing maturity. * * *

BILLING CODE 3410–02–P

BILLING CODE 3410-02-C

Relationship Between Marbling, Maturity, and Carcass Quality Grade*



* Assumes that firmness of lean is comparably developed with the degree of marbling and that the carcass is not a "dark cutter."

** Maturity increases from left to right (A through E).

*** The A maturity portion of the Figure is the only portion applicable to bullock carcasses.

Figure 1

* * * * *

7. § 54.106 is amended by revising the third sentence in paragraph (b)(3), revising paragraphs (c)(1) and (c)(2) and removing paragraph (c)(3) to read as follows:

§ 54.106 Specifications for official United States standards for grades of carcass beef (quality-steer, heifer, cow).

* * * * *

(b) * * *

(3) * * * In carcasses throughout the range of maturity included in this group, a minimum modest amount of marbling is required (see Figure 1) and the ribeye muscle is slightly firm.

(c) *Select* (1) For carcasses throughout the range of maturity permitted in the Select grade, the minimum degree of marbling required is a minimum slight amount (see Figure 1) and the ribeye may be moderately soft.

(2) Carcasses in the maturity group permitted range from the youngest that are eligible for the beef class to those at the juncture of the two youngest maturity groups, which have slightly red and slightly soft chine bones and cartilages on the ends of the thoracic vertebrae that have some evidence of ossification. In addition, the sacral vertebrae are completely fused and the cartilages on the ends of the lumbar vertebrae are nearly completely ossified. The rib bones are slightly wide and slightly flat and the ribeye muscle is slightly light red in color and is fine in texture.

* * * * *

Dated: January 12, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–1235 Filed 1–18–95; 8:45 am]

BILLING CODE 3410–02–P

Federal Register

Thursday
January 19, 1995

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 32
Federal Acquisition Regulation; Assignment of Claims; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 32

[FAR Case 94–761]

RIN 9000–XXXX

Federal Acquisition Regulation; Assignment of Claims

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 to implement revisions which expand the authority to prohibit setoffs against assignees when contractors assign a contract to a financial institution. This regulatory action is not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before March 20, 1995 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: –General Services Administration, FAR Secretariat (VRS),–18th & F Streets, NW., Room 4037, Washington, DC 20405.

Please cite FAR case 94–761 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. John Galbraith, Finance/Payment Team Leader, at (703) 697–6710, in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GSA Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 94–761.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Public Law 103–355, (the Act) provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements. Major changes that can be expected in the acquisition process as a result of the Act's implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network (FACNET). In order to promptly achieve the benefits of the provisions of the Act, the government is issuing implementing regulations on an expedited basis. We believe prompt publication of proposed rules provides the public the opportunity to participate more fully in the process of developing regulations.

The FAR Council is interested in an exchange of ideas and opinions with respect to the regulatory implementation of the Act. For that reason, the FAR Council is conducting a series of public meetings. However, the FAR Council has not scheduled a public meeting on this rule (FAR case 94–761) because of the clarity and non-controversial nature of the rule. If the public believes such a meeting is needed with respect to this rule, a letter requesting a public meeting and outlining the nature of the requested meeting shall be submitted to and received by the FAR Secretariat, Room 4037, GSA Building, Washington, DC 20405 (202) 501–4755, on or before February 21, 1995. Please cite FAR case 94–761. The FAR Council will consider such requests in determining whether a public meeting on this rule should be scheduled.

FAR Case 94–761

This notice announces FAR revisions developed under FAR case 94–761. The language in FAR 32.803(d) is changed to expand the authorization of a no-setoff commitment in contracts which are assigned under the Act. Prior to the Act, the no-setoff commitment could only be included in a contract during time of war or national emergency. Under the Act, the inclusion of the no-setoff commitment is based solely on whether the President makes a determination of need. The Act further states that each determination of need by the President shall be published in the Federal Register.

The Act also resulted in a reorganization of the United States Code (U.S.C.) to improve the reading format. Some parts of the U.S.C. were deleted as a result of obsolescence, such as the inclusion of the Atomic Energy Commission as a designated agency which may utilize the no-setoff commitment in contracts. Further, the U.S.C. reference to contracts awarded prior to October 9, 1940, was deleted. These changes to 41 U.S.C. 15 did not affect the current FAR language at Subpart 32.8.

The FAR has also been revised to reflect the micro-purchase threshold, in lieu of the previous floor of $1,000, for use of the Assignment of Claims clause.

B. Regulatory Flexibility Act

This proposed rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, et seq. (FAR case 94–761), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 32

Government procurement.

Dated: January 12, 1995.

Edward Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, it is proposed that 48 CFR Part 32 be amended as set forth below:

1. The authority citation for 48 CFR Part 32 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 32—CONTRACT FINANCING

32.801 [Amended]

2. Section 32.801 is amended in the definition of ''Designated agency'' by inserting ''the Department of Energy,'' following ''Federal Aviation Administration,''.

3. Section 32.803(d) is revised to read as follows:

32.803 Policies.

* * * * *

(d) Any contract of a designated agency (see 32.801), except a contract under which full payment has been made, may include a no-setoff commitment only when a determination of need is made by the President. Each such determination of need will be published in the Federal Register.

* * * * *

4. Section 32.806(a) is revised to read as follows:

32.806 Contract clauses.

(a)(1) The contracting officer shall insert the clause at 52.232–23,

Assignment of Claims, in solicitations and contracts expected to be above the micro-purchase threshold, unless the contract will prohibit the assignment of claims (see 32.803(b)). The use of the clause is not required for purchase orders. However, the clause may be used in purchase orders expected to be above the micro-purchase threshold, that are accepted in writing by the contractor, if such use is consistent with agency policies and regulations.

(2) If a no-setoff commitment is to be included in the contract (see 32.801 and 32.803(d)), the contracting officer shall use the clause with its Alternate I.

* * * * *

[FR Doc. 95–1259 Filed 1–18–95; 8:45 am]

BILLING CODE 6820–34–P

Federal Register

Thursday
January 19, 1995

Part V

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone: Supplemental Rule To Amend Leak Repair Provisions Under Section 608 of the Clean Air Act; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–5140–2]

RIN 2060–AE92

Protection of Stratospheric Ozone: Supplemental Rule To Amend Leak Repair Provisions Under Section 608 of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Through this action EPA is proposing to amend the Refrigerant Recycling Regulations promulgated under section 608 of the Clean Air Act Amendments of 1990. This proposal is being undertaken to address specific concerns regarding the leak repair requirements for industrial process refrigeration systems, pursuant to a settlement agreement with the Chemical Manufacturers Association (CMA). This proposal will affect the owners and operators of industrial process refrigeration with regard to leak repair provisions. Minor aspects of this proposal will also affect federal owners and operators of commercial and comfort-cooling refrigeration with charges of 50 pounds refrigerant or greater. This action proposes to provide greater flexibility to owners and operators of industrial process sources and to some federally-owned commercial and comfort-cooling refrigerant sources with regard to leak repair provisions. Such proposed flexibility can be provided without compromising the goals of protecting public health and the environment.

DATES: Comments on this proposal must be received by February 21, 1995, at the address below. A public hearing, *if requested,* will be held in Washington, DC. If such a hearing is requested, it will be held on February 3, 1995, and the comment period would then be extended to March 6, 1995. Anyone who wishes to request a hearing should call Sue Stendebach at 202/233–9117 by January 26, 1995. Interested persons may contact the Stratospheric Protection Hotline at 1–800–296–1996 to see if a hearing will be held and to obtain the date and location of any hearing. Any hearing will be strictly limited to the subject matter of this proposal, the scope of which is discussed below.

ADDRESSES: Comments on this proposal must be submitted to the Air Docket Office, Public Docket No. A–92–01 VIIID, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M–1500. Additional comments and materials supporting this rulemaking are contained in Public Docket No. A–92–01. Dockets may be inspected from 8 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Cindy Newberg, Regulatory Development Section, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, SW., Washington, DC 20460, (202)233–9729. The Stratospheric Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. Refrigerant Recycling Regulations
II. Proposed Revisions to the Refrigerant Recycling Regulations
A. Need for Separate Leak Repair Requirements
B. Additional Time to Complete Repairs
C. Repairs Requiring a Process Shutdown
D. Determining the Full Charge of an Industrial Process Refrigerant System
E. Static and Dynamic Tests
1. Soap Bubble Test
2. Electronic Leak Detectors
3. Ultrasonic Detectors
F. Failed Verification Tests
1. Requirement to Retrofit or Retire the Leaking Equipment
2. Option for Second Repair Attempt
3. Option to Reduce Other Equipment Leaks
G. Clarification of Levels to Which Leaks Must be Repaired Leak Rate
H. Extension for Retrofitting a Facility
1. Additional Time Based on Regulatory Delays and/or the Need for a Suitable Replacement
2. Additional Time Based on the Unavailability of Necessary Parts
3. Additional Time Beyond the one Additional Year
I. Allowing Appliances to be Pressurized Above 0 psig
J. Treatment of Purged Refrigerant
K. Temporarily Shutting Down Equipment Prior to Repairing Leaks
L. Possible Need for an Extension for Federally Owned Chillers
III. Summary of Supporting Analysis
A. Executive Order 12866
B. Regulatory Flexibility Act
C. Paperwork Reduction Act

I. Refrigerant Recycling Regulations

Final regulations promulgated by the U.S. Environmental Protection Agency (EPA) under section 608 of the Clean Air Act Amendments of 1990 (the Act) published on May 14, 1993 (58 FR 28660), establish a recycling program for ozone-depleting refrigerants recovered during the servicing and disposal of air-conditioning and refrigeration equipment. Together with the prohibition on venting during the maintenance, service, repair, and disposal of class I and class II substances (see the listing notice January 22, 1991; 56 FR 2420) that took effect on July 1, 1992, these regulations are intended to substantially reduce the emissions of ozone-depleting refrigerants. These regulations were subsequently revised in the final regulations published August 19, 1994 (59 FR 42950) and November 9, 1994 (59 FR 55912).

The current regulations require that persons servicing air-conditioning and refrigeration equipment observe certain service practices to reduce emissions, establish equipment and reclamation certification requirements, and comply with a technician certification requirement. The regulations also require that ozone-depleting compounds contained in appliances be removed prior to disposal of the appliances, and that all air-conditioning and refrigeration equipment, except for small appliances, be provided with a servicing aperture that will facilitate recovery of refrigerant.

In addition, the regulations restrict the sale of refrigerant and establish a leak repair requirement for equipment that normally holds a refrigerant charge of fifty pounds or more. An annual leak rate of 35% was established for industrial process sources and commercial chillers, while an annual leak rate of 15% was established for comfort-cooling. If a leak rate is exceeded, the equipment must be repaired to bring the system to below the annual leak rate, within 30 days. An alternative is to submit a retrofit or replacement plan within 30 days, outlining action to retrofit or replace equipment within one year from the exceedance.

II. Proposed Revisions to the Refrigerant Recycling Regulations

EPA proposes revisions to the leak repair provisions in response to a settlement agreement reached by the Agency and the Chemical Manufacturers Association (CMA) relative to industrial process sources. In that agreement, EPA agreed to propose changes to the leak repair requirements that provide additional time to repair and/or retrofit industrial process refrigeration equipment based on the uniqueness of the industrial process sector and on new information provided by CMA. EPA also proposes to revise portions of the leak repair requirements

that address evacuation requirements relative to oil changes and destruction of purged emissions.

Under section 608 of the Clean Air Act Amendments of 1990, regulations were required to establish standards and requirements regarding the use and disposal of class I and class II substances during the service, repair, or disposal of appliances and industrial process refrigeration. The regulations were required to reduce the use and emission of class I and class II substances to the lowest achievable levels and to maximize the recapture and recycling of such substances. Regulations published on May 14, 1993 set out comprehensive requirements for recovery and reclamation of refrigerants from stationary sources. These regulations also establish leak repair requirements to further minimize emissions of class I and class II substances. The new information received from CMA indicates that under certain circumstances the timelines within which to repair industrial process refrigeration system leaks or retrofit such systems are not achievable. Today's proposed rulemaking seeks to respond to those circumstances by proposing the shortest timeframes possible, yet still achievable. EPA believes that today's proposal meets the standards set forth by Congress in the Clean Air Act Amendments. EPA requests comment on the legal basis under which EPA is proposing these revisions.

In today's action, EPA also proposes to allow additional time for repairs and retrofits and replacements of federally-owned or operated commercial or comfort-cooling systems where procurement requirements prevent timely acquisition of parts or services. This issue was not part of the settlement agreement, but was brought to EPA's attention by the U.S. Department of Energy. EPA also proposes to clarify that leaks exceeding the annual leak rate need only be brought to a level below that applicable annual leak rate, not to zero. Although this issue was not part of the settlement agreement, such clarification is necessary to be consistent with the terms of settlement, relative to the 35% annual leak rate and repair requirements. This clarification affects owners and operators of commercial refrigeration systems and comfort-cooling systems containing more than 50 pounds of refrigerant. The recycling rule, 40 CFR part 82, subpart F, is only being re-opened for purposes of reconsidering these specific provisions outlined in this paragraph and the paragraph above, and discussed in today's proposed rule. EPA is not inviting comment on any other provisions of the recycling rule.

A. Need for Separate Leak Repair Requirements

Three main refrigeration sectors are affected by the leak repair provisions promulgated under section 608 of the Act: commercial refrigeration, comfort-cooling, and industrial process refrigeration. While many different commercial refrigeration and comfort-cooling systems are similar in design and function, EPA has received new information from CMA illustrating the uniqueness of industrial process refrigeration systems. Industrial process refrigeration units are custom-designed and assembled in-place at a process location. Thus, each of these industrial units has unique operating characteristics. Industrial process refrigeration is defined in § 82.152 as:

> * * * complex customized appliances used in the chemical, pharmaceutical, petrochemical and manufacturing industries. This sector also includes industrial ice machines and ice rinks.

There are several apparent differences between industrial process refrigeration equipment and other types of equipment affected by the leak repair provisions. Industrial process refrigeration systems are larger and more complex than hermetically-sealed consumer units. Most comfort-cooling systems have hermetically-sealed or semi-hermetically-sealed refrigerant loops. By contrast, industrial process refrigeration systems often have compressor shaft seals, gasketed flange seals, and valves with packing gland seals. All of these are potential leak points. For example, an industrial process system can include 17 different evaporators, located at distances up to half a mile from the compressor. Another example is that of a system that has a 5,000-horsepower compressor moving nearly 200,000 pounds of refrigerant. A system that size cannot be a ''sealed'' unit. This complexity makes leak detection and leak rate calculations more difficult than for other sectors affected by the leak repair provisions.

Industrial process refrigeration systems are also frequently designed to provide refrigeration to more than one industrial process and at more than one location within the same facility. These distributed refrigeration systems have multiple refrigerant reservoirs and evaporators and may be connected by pipe runs of half a mile or more, as mentioned above. Piping, valves and even evaporators in industrial process refrigeration systems are likely to be less accessible than the potential leak sources normally found in the other systems.

Industrial process equipment, particularly that used in the chemical manufacturing industry, is frequently located in plant areas near high pressure/temperature piping and equipment and where leaks/spills of flammable or otherwise hazardous chemicals may occur. A heat exchanger in which a class I or class II refrigerant is cooling a hazardous process fluid at high pressure poses different safety risks than those normally encountered in the commercial refrigeration sector or the comfort-cooling sector. Many industrial process sources are manufacturing or handling acutely toxic, corrosive, or carcinogenic chemicals that need to be handled in an extremely cautious manner. It is imperative that they be cooled properly to avoid fire, explosion, or emissions.

In order to perform certain types of repair work on industrial process systems, a shutdown of the facility may be necessary to avoid such hazards. Shutting down industrial process refrigeration equipment means curtailing production or shutting a plant down completely, which can incur enormous costs in terms of time and money. In some cases, the size and complexity of a plant may require hours or days to completely shut down all the process equipment to avoid any unwanted chemical reactions that could lead to fires, explosions, or other immediate hazards. Such a costly and complex shutdown is not required to repair commercial or comfort-cooling systems that can sustain a short shutdown without significant added cost or consequence.

Because of the new information that illustrates the substantial differences between the industrial process refrigeration sector and the other sectors affected by the leak repair provisions, EPA is proposing to revise the leak repair provisions promulgated under § 82.156(i) to establish separate provisions for the industrial process refrigeration sector. EPA requests comment on the appropriateness of establishing separate repair provisions for industrial process refrigeration.

B. Additional Time To Complete Repairs

Section 82.156(i)(1) of the current rule requires that owners of commercial and industrial process refrigeration equipment must have all leaks repaired if the equipment is leaking at a rate such that over 35% of the refrigerant is released within a 12-month period. Under § 82.156(i)(3), owners are not required to repair such leaks if, within

30 days, they develop a one-year retrofit or retirement plan for the leaking equipment. Due to differences between the industrial process refrigeration sector and other sectors affected by the leak repair provisions, EPA recognizes that the potential for reasonable delays in repairing leaks is great in the industrial process sector. Thus, EPA proposes to allow the owners and operators of industrial process refrigeration equipment more than 30 days to repair leaks when the necessary parts are unavailable, or if requirements of other federal, state or local regulations make a repair within 30 days impossible. Additional time to receive delivery of any necessary parts or comply with any applicable regulations would be allowed.

Although EPA proposes to allow this additional time when necessary, EPA proposes that the owner or operator of the industrial process refrigeration equipment must exert best efforts to repair leaks within the 30-day time period. If the equipment cannot be repaired within the 30-day requirement, the owner or operator must document repair efforts, notify EPA of the inability to comply with this 30-day repair requirement, provide appropriate information concerning the reason for the inability to complete repair efforts and submit to EPA a one-year retrofit, replacement or retirement plan for the leaking equipment.

Generally, EPA believes that most leaks can be repaired within 30 days. For example, a leak caused by a ruptured tube would normally be repaired within several days to a few weeks, depending on the size and complexity of the system. Another example of a leak that could normally be repaired within the 30-day timeframe would be a leaking gasket. If refrigerant is leaking from the gasket between the flanges where two pieces of pipe come together, a repair can often be accomplished by merely tightening the bolts that hold the flanges together. Assuming that the piping is accessible, this might take only a few minutes.

However, EPA recognizes that under certain circumstances it may not be possible for the owners and operators of industrial process refrigeration equipment to complete all necessary repairs within the thirty-day timeframe, or complete retrofit activities within one year, as established by the final regulations. Such necessary repairs may not be able to be completed within 30 days due to the need for the owners and operators of industrial process refrigeration equipment to comply with all other applicable federal, state, and local regulations. For example, if the piping for the industrial process equipment is covered with asbestos-containing insulation, the insulation for the affected portions of the system will have to be removed to detect and repair the leaks. Depending on the amount of piping affected, EPA regulations may require a ten working day notice before any asbestos-handling activities may begin. Only once the process of removing the insulation is complete can work begin on the refrigeration system.[1]

Other types of regulatory requirements that may impact the ability of a facility to either complete the necessary repairs within 30 days or retrofit the facility within one year include the need to obtain appropriate state or local permits. For example, one company planning to replace its ozone-depleting component with an ammonia refrigeration component in California encountered many unavoidable delays because ammonia is treated as a hazardous substance under the California Risk Management Prevention Plan (RMPP) program. As a result, the company had to prepare a risk management plan that met the approval of the local fire department before ammonia could be brought to the site. It took a total of six months to write and receive approval of the plan from the State. A similar situation could be encountered by any facility in California that decided to replace its ozone-depleting system with an ammonia system. Since most companies are unlikely to commit significant investment to a project until it is clear that the project can be approved, this requirement could, in effect, delay other necessary retrofit activities by up to six months. This may limit the ability of the company to complete retrofitting the system within one year.

In some cases, industrial process refrigeration systems, particularly refrigerated condensers, serve as emission control devices for chemicals that could otherwise be released. For example, a refrigeration system may be used to cool and condense vapors, allowing recovery rather than venting to the atmosphere. Federal or state emission control requirements will typically specify that the condenser must be in operation whenever the manufacturing process is running. Limited periods of down time for maintenance on the condenser may be allowed. However, companies may not have unlimited freedom to shut down the system that controls emissions.

Repairing leaks and retrofitting systems may be delayed because of the unavailability of needed parts. Many parts in an industrial process refrigeration system are custom-built. This is different from the commercial and comfort-cooling sectors, where parts tend to be more uniform, more widely available, and may often be purchased ''off the shelf.'' In order to repair or replace a leak source in an industrial process facility, the needed part may have to be custom-built. The process of building the part and shipping it to the facility may cause a delay that makes it impossible for the owner or operator of the industrial process facility to repair the leaks within 30 days.

Although EPA recognizes these potential difficulties and delays, EPA proposes that the owner or operator of the industrial process refrigeration equipment must exert best efforts to repair leaks within the 30-day time period. EPA believes that best efforts on the part of the owner or operator of the industrial process refrigeration system implies that a methodology for repair that is reasonably expected to be effective based on past experience has been used. A best efforts approach used to repair leaks should first consider the experience of the individual or individuals charged with performing the repairs. However, for repairs that are less common or have not been performed in the past, best efforts on the part of the owner or operator of the industrial process system may imply appropriate consultation by the technician with manuals or colleagues, both within and outside of the company. If the owners or operators of the industrial process system followed the methodology discussed above, and are unable to repair all necessary leaks within thirty days, EPA proposes to grant extra time. EPA requests comments on this repair methodology. While EPA believes that a best efforts approach that incorporates the information above is important, EPA is concerned about the lack of formal protocols referred to in this definition.

The owners or operators of the industrial process facility would be required to maintain records of their actions and submit information to EPA that details the need for additional time to complete all repair work. EPA believes the following information should be maintained by the owners or operators of the affected system and reported to EPA:

(1) Identification of the industrial process facility;

(2) Leak rate;

(3) Method used to determine the leak rate and full charge;

(4) Date a leak rate of 35 percent or greater was discovered;

[1] See 40 CFR 61.145(a)(5) and 40 CFR § section 61.145(b).

(5) Location of leaks(s) to the extent determined to date;
(6) Any repair work that has been completed thus far and the date that work was completed;
(7) Plan to fix other outstanding leaks to achieve a rate below the applicable allowable annual leak rate;
(8) Reasons why more than 30 days are needed;
(9) Estimate of when repair work will be completed;
(10) If time changes for original estimates, documented reason for changes;
(11) Dates and types of static and dynamic tests performed; and
(12) Test results for both the static and dynamic tests.

All the above information would be maintained by the industrial process refrigeration facility on-site. Information discussed in (1) through (9) would be submitted as part of the original notification to the Agency. This information would be submitted within thirty days from the time the leak was detected. The information requested in item (10) would only be submitted as necessary. The information in items (11) and (12) would be submitted within thirty days of completing repairs on all appropriate leaks. EPA does not believe that these reporting or recordkeeping procedures place undue burden on the affected community. EPA believes that documenting the services performed by repair personnel is normally kept by the owners and operators of industrial process refrigeration equipment. However, EPA requests comment on these recordkeeping and reporting requirements.

C. Repairs Requiring a Process Shutdown

In order to complete many types of repairs, an industrial process refrigeration system may be required to shut down. EPA proposes to define a process shutdown as when, for purposes such as maintenance or repair, a process temporarily ceases to operate or manufacture whatever is being produced at the particular facility. A typical manufacturing process may consist of the coordination and integration of a chemical reaction, separation, and heating or cooling activities. Since many facilities do not have back-up refrigeration systems, a shutdown of the refrigeration unit in order to facilitate the repair of leaks could require the curtailing or cessation of production. For the purposes of this proposal, EPA does not believe a process shutdown occurs when a system is temporarily taken off-line for reasons such as a power outage. Nor does it constitute a system mothballing of a facility discussed in II. K.

The costs of a shutdown can be enormous. During the time when the process is shut down, no product will be produced. This results in lost sales. For example, one company estimates that the cost of a three-day shutdown of a particular process facility was $137,000. This estimate included lost profits due to products that either would not be made at all, or would be off-grade during the start-up and shutdown, plus maintenance charges incurred by the facility. Another facility estimated that to complete all necessary leak repair work should take two days, but could reasonably be expected to take as many as six days depending on the number or type of additional leaks discovered during the repair operations. The lost profits could be as much as $171,000 per day for that facility.

In most cases shutting down a process cannot be done in an instant. It may require hours or days to completely shut down all the process equipment while avoiding any runaway chemical reactions that could lead to fires, explosions, or other immediate hazards to human health and the environment. It may take several days to release or control hazardous energy and clean out pipes, storage tanks, and other appropriate equipment to allow for a safe working environment. Therefore, EPA believes it is necessary to propose additional time to complete all necessary leak repair work for an industrial process refrigeration facility where a process shutdown is necessary.

EPA is proposing a 120-day repair period, rather than a 30-day repair period, in instances where an industrial process shutdown is needed to repair a leak or leaks from industrial process refrigeration equipment. EPA believes that the need to plan a process shutdown, ensure appropriate personnel are available, lessen environmental impacts and risks to human health, and to the extent possible, lessen the economic impact, warrant the proposal of such additional time. Although the system itself may not need to be shut down for the entire 120 days in order to make the repairs, the actual timing of beginning the shutdown may be longer in order to avoid safety hazards and severe economic disruptions. EPA believes that facilities have every incentive to make repairs expeditiously, both because leaking refrigerant is very costly and because production, once off-line, is severely curtailed or halted until the system comes back up. Therefore, EPA is proposing to allow 120 days for the owners or operators of industrial process refrigeration facilities in instances where an industrial process shutdown is needed to repair a leak or leaks from industrial process refrigeration equipment. EPA requests comments on the appropriateness of this proposed provision.

D. Determining the Full Charge of an Industrial Process Refrigerant System

Section 82.156(i) requires that leaks be repaired if the equipment is leaking at a specified rate in relation to the total charge of the equipment. In order to ensure that additional time to repair leaks is warranted and to ensure that the leaks are fully repaired, EPA believes it is necessary to establish the correct full charge of refrigerant for industrial process refrigeration systems prior to determining the leak rate for the equipment. Refrigerant is contained as a liquid, gas, or two-phase mixture in reservoirs, equipment, and various amounts of piping. The equipment vendors may calculate the refrigerant capacity for the devices they sell; however, such calculations may not include all of the piping the system contains, as well as any piping that may be added by the owner or operator that may differ from the original engineering designed, and therefore increase the full charge of the equipment.

One company recently completed construction and installation of an industrial process refrigeration unit that was supposed to hold 70,000 pounds of refrigerant. In this case, the owner suspected a problem and performed its own calculations, estimating a full charge of 96,000 pounds of refrigerant. When the company filled the system for the first time, the system took 150,000 pounds of refrigerant. Had the owner filled the system to the manufacturer's specifications, the system would not have functioned well and the owner may have added refrigerant, presumably attributing the need for additional refrigerant to leaks.

For older refrigeration systems, the full charge may not have been generally known. When those systems were built there were no regulatory requirements that stipulated that owners or operators should know exactly how much refrigerant constituted a full charge. Many refrigerants were inexpensive to add or replace. Therefore, the owner or operator may not have required that the full charge be recorded routinely. Since the full charge was performance-based, it may have varied with season, ambient temperature, or production rate.

EPA proposes the following methods for owners and operators of industrial process refrigeration systems to determine the full charge and requests comments on a methods. EPA has

received information indicating that there are at least five possible methods for determining the full charge of a system. Each of these methods has limitations. However, EPA believes that the alternative to these methods would be to require the operators of industrial process refrigeration equipment to evacuate the systems and add refrigerant a little at a time while checking the effect on cooling. EPA believes that an attempt to proceed in that manner would cause an unreasonable burden on the affected community.

The first method for determining the full charge of the system is to rely on the manufacturers' determinations. The benefit of this system is that typically the manufacturer provides a single number rather than a range. The limitations include the infrequency with which the manufacturer may actually provide this information and the occasion to question the number's accuracy. Questions concerning the accuracy of the number will reflect the fact that industrial process refrigeration equipment is often custom-built; therefore, a particular system may be a one-of-kind appliance for which the manufacturer's determinations may only be an estimate. Furthermore, the owner or operator of a particular system may have made subsequent modifications, which would adjust the full charge of the system. Moreover, even where the manufacturer's estimates may initially appear reasonable, experience with actual use of the equipment may indicate the need to revise the estimate.

The second method for determining the full charge of a system is to require the owner or operator to do calculations. In some cases the owners or operators of a system should be able to estimate a full charge by calculations based on component sizes, flow rates, pressures, and other considerations. Of course, these calculations may become very complex due to the number of individual pipes, tubes, and other parts the system contains. Additionally, each measurement or assumption that goes into the total calculation will have a margin of error. Consequently, although this method has the benefit of being based on objective criteria and methods, the resulting number may be subject to change as methods are refined or experience with the system increases.

The third method is to rely on actual measurements of the amount of refrigerant added or evacuated from an industrial process refrigeration system. Although this may be a more accurate method and would provide a single number rather than a range of the full charge, evacuating a system is not always practical. For example, evacuating the entire charge may require a process shutdown and a place to store that refrigerant. In addition, the exact measurement may only represent the amount of refrigerant evacuated. Since the system could have been below or above full charge when the evacuation was performed or some refrigerant may have been lost during evacuation, the amount of refrigerant evacuated may not be an accurate measure of the full charge of the system.

A fourth method for determining the full charge of a system is to choose a number from within an established range based on the best data currently available. In situations where the refrigerant system functions properly within a range of quantities, the owner or operator may choose a number from within the range based on the data and consider that number to be the full charge. Once a number is selected that number would be considered the full charge. Over time the owner or operator of the system may adjust this number based on new or revised information concerning the performance of the system, thereby potentially increasing the accuracy of the full charge estimate. However, the drawback to this method is that there is no clarity regarding the circumstances under which a change in the number could be justified. An ever-changing estimate of the full charge defeats the purpose of creating such a baseline. Therefore, the Agency proposes that this method not be included in the list of method options from which owners and operators can determine full charge.

The last method for determining the full charge of a system is to establish a definition of full charge that is based on maximum cooling performance. One possible approach is to define the full charge as the minimum amount of refrigerant necessary for a system to achieve its maximum refrigerant performance during times of maximum process heat load. This would include consideration of the production process and the most adverse ambient conditions normally encountered. This definition has a major drawback. Because it is based on cooling performance, it does not give a number in the context of pounds of refrigerant in the system. Several other factors could affect cooling performance, severely skewing the calculation of full charge.

EPA believes that it is appropriate to use any of the first three methods to establish the full charge for an industrial process refrigeration system; however, EPA believes that the last two methods would not be appropriate. EPA is concerned with the last two methods because of the lack of objectivity and the possibility for frequent adjustments. Furthermore, EPA believes it is critical that the owners or operators of a particular system use both a consistent and accurate approach for determining the full refrigerant charge. Such an approach may include one of the first three methods, or a combination of them to establish the full charge of a system. For example, the owners or operators may wish to consider the manufacturer's estimates in conjunction with its own calculations. Once the full charge is established, a leak rate can be based upon this number. However, constantly changing the methodology for establishing the full charge could alter the determination of the leak rate for the system. Within reason, EPA could allow for a particular facility to adjust its method for determining the full charge where a change would lead to a more accurate estimate of the full charge; however, EPA would also take consistency into account.

In today's action, EPA proposes that the first three methods, or a combination of them, may be used to determine the full charge. EPA requests comments on the five methods for determining the full charge of a system discussed above, and the appropriateness of the methods proposed. In addition, EPA requests comments on other potential methods for establishing the full charge of an industrial process refrigeration appliance.

E. Static and Dynamic Tests

EPA is proposing that the repair efforts required for industrial process refrigeration equipment be those that sound engineering judgment indicates will be sufficient to bring the leak rates below a 35 percent annual rate, that a static test be conducted at the conclusion of the repairs to determine whether the repairs undertaken were successfully completed, and that a dynamic test be conducted within 30 days of bringing the system back on-line (if taken off-line) or of completing the actual repairs, but no sooner than when the system has achieved steady-state operating characteristics. EPA is also proposing that the system not be brought back on-line, in the case where it was taken off-line, until a static test indicates that the repairs undertaken have been successfully completed. If the dynamic test indicates that the repairs have not been successfully completed, EPA proposes that the owner would be subject to a requirement to retrofit or replace the equipment within one year of the failure to verify that the repairs had been successfully completed or

such longer time period as may be granted under this proposal. A retrofit plan would need to be submitted to EPA as discussed in F.1 of this preamble and outlined in the proposed reporting requirements of this proposed rulemaking. Moreover, EPA is proposing that the owner or operator notify EPA of the failure within 30 days of the failed dynamic verification test.

To ensure that the leak repair work conducted on industrial process refrigeration equipment, where additional repair time has been granted, has been successful and that leaks have been brought to below 35 percent per year, parties to the settlement agreed that it is desirable and beneficial to perform leak checking tests after the owners or operators of the facility have completed the necessary work. The owners or operators of the industrial process refrigeration system will be relying on sound engineering judgment to determine the leak rate and to determine the type of leak tests to perform. With regard to this rulemaking, EPA proposes to interpret sound engineering or professional judgement to represent a combination of the use of logic and operational experience, with methods of calculation that are practical, based on training, experience and education. As mentioned above, EPA believes two types of tests should be conducted to ensure that the leak rates have been brought successfully below 35 percent per year—a static test and dynamic test.

EPA is proposing to define static tests as those tests that take place before the refrigeration system has been started again, in cases where the system has been shut down. A static test, with regard to the leak repairs that require the evacuation of the equipment or parts of the equipment, is a test conducted prior to the replacement of the full refrigerant charge and before the appliance or portion of the appliance has reached operation at normal working conditions of temperature and pressure. However, not all repairs require the evacuation of the system. Often, systems are not evacuated to perform repairs. For example, it is not necessary to evacuate the system to repair leaks for piping or tubing connections such as flanges, unions, flare fittings, and compression joints, leaks from gauges or control lines, leaks from valve packing, or leaks from tubes in the heat exchanger if the leak is at the tube sheet or the tube can be re-rolled or plugged. With respect to repairs conducted without the evacuation of the refrigerant charge or without a shutdown, a static test would mean a test conducted as soon as practical after the conclusion of the repair work. In situations where a system has been evacuated, the system may not be brought back on-line until a static test indicates that the repairs undertaken have been successfully completed.

EPA is proposing to define a dynamic test as a leak test, performed using sound engineering judgment, that involves checking the repairs within 30 days of returning to steady-state operating characteristics, or where steady-state has been maintained, within 30 days after the repairs have been completed. Steady-state operating characteristics refer to the conditions present when operating at temperatures, pressures, fluid flows, speeds and other characteristics that would normally be expected for a given process load and ambient condition. Steady-state operating characteristics are marked by the absence of atypical conditions affecting the operation of the refrigeration system. Dynamic tests for equipment from which the refrigerant charge has been evacuated would mean a test conducted after the appliance or portion of the appliance has resumed operation at steady-state or normal operating conditions of temperature and pressure.

With respect to repairs conducted without evacuation of the refrigerant charge, dynamic tests would mean a reverification test conducted after the static test. Since the system was not evacuated, it would only be necessary to conclude any required changes in pressure, temperature or other conditions to return the system to a steady-state for operations. This test would be performed within 30 days of return to steady-state operation.

EPA is further considering an alternative of allowing the dynamic test to be conducted prior to achieving steady-state operations where the system was evacuated if reassembly and operation will make the testing more difficult and less reliable. In these circumstances the dynamic test could be conducted without resuming steady-state operations, but with a standard operation pressure or temperature for the appliance. EPA is also concerned about how to judge whether such a test actually is more reliable than a test conducted after the system has been completely returned to steady-state operations. Therefore, EPA is not proposing to allow for this type of dynamic test alternative, but requests comments on the need for such an alternative and under what conditions it would be reasonable to accept such an approach.

If the dynamic test indicates that the repairs have not been successfully completed, the owner or operator of the system would be required to retrofit or replace the equipment within one year of the failure to verify that the repairs had been successfully completed or within such longer time period as may be granted under this proposal. A retrofit plan would need to be submitted to EPA as discussed in F.1 of this preamble and outlined in the proposed reporting requirements of this rule. In addition, EPA is proposing that the owner or operator notify the Agency of failure within 30 days of the failed dynamic verification test. The Agency believes that in most cases the industrial process facility will already be subject to the reporting requirements discussed in today's action, since most of these repairs will take longer than 30 days to complete. Therefore, this information will be reported as part of the requirements contained in the discussion for allowing more than 30 days to complete repairs. However, if there is a case where a failed dynamic test could in fact occur as part of a method of completing all repairs within 30 days, the industrial process facility would need to submit information as part of its submittal of a retrofit or replacement plan.

The above definitions of static and dynamic tests would allow the same test methodologies in certain circumstances to be categorized as both a static test or a dynamic test, depending upon when and under what conditions the tests are performed. Furthermore, this definition does not specify which type of static or dynamic test should be used under which circumstances. Due to the unique situations faced by each industrial process facility, EPA believes it is important for that decision to be based upon sound engineering or professional judgment. EPA requests comment on the proposed definitions of static and dynamic tests, including the need to perform a static test as soon as is practical after completing repairs, and the need to conduct a dynamic test within 30 days of returning to normal operating conditions. In addition, EPA requests comments on the associated recordkeeping and reporting requirements.

Below are examples of various test methods that EPA believes represent acceptable forms of static and dynamic tests. EPA wishes to clarify that other types of tests may exist. Today's proposal, however, does not identify any particular type of test that must be used. EPA requests comments on the appropriateness of these tests as well as others not specified in this proposal.

1. Soap Bubble Test

A simple leak test method can be performed by applying a soap bubble solution to potential leak sources and seeing if bubbles form. This is an inexpensive method that should not pose any explosion hazard and can provide a qualitative estimate of a leak rate. This method cannot work as a dynamic test for systems under vacuum, leak points cold enough to freeze the solution, or points that are inaccessible because of insulation, tightness of space, or some other constraining factor. However, a soap bubble test could be used as a dynamic test in other circumstances. It can also serve as a static test if the insulation is removed, and the system is at an acceptable temperature and under pressure.

2. Electronic Leak Detectors

Electronic leak detectors identify the presence of specific refrigerants and give a reading on the degree of a leak within a range allowed by the detector, usually by an audible alarm that may be accompanied by lights. These detectors have movable probes that can be put into some places where a soap bubble test would be difficult. For example, an electronic detector can be used for the underside of a fitting. However, the effectiveness of electronic leak detectors can be reduced by the presence of insulation, particularly if the insulation was blown with an ozone-depleting substance. Other limitations include the potential for false readings due to previously leaked refrigerants soaking the insulation. Also, the usefulness of these detectors is limited because the point at which a leak is shown may not be the actual spot at which the leak occurred. In some instances, a space between the insulation and the pipe is caused by irregularities in the outer configuration of a pipe, such as flanges or valves. Some electronic detectors heat the sampled gases before analyzing them. Therefore, there could be a risk of explosion under certain conditions. Despite these limitations, in many circumstances, electronic leak detection represents a useful static or dynamic test option.

3. Ultrasonic Detectors

Ultrasonic detectors respond to the high frequency noise generated by a leak. In some instances, these detectors may be appropriate for static or dynamic tests. One major advantage of these detectors is the ability to detect leaks from several feet away. This is particularly useful for leaks that may occur in otherwise inaccessible locations. However, facilities may often generate background noise that could interfere with the effectiveness of the ultrasonic detectors. Where appropriate, these detectors can be used to perform either static or dynamic tests.

F. Failed Verification Tests

Through this action, EPA is proposing that an industrial process refrigeration system, if taken off-line, not be brought back on-line until a static test indicates that the repairs undertaken have been successfully completed. EPA is further proposing that a dynamic test be performed within 30 days to verify that the leaks have been successfully completed. Since a static test typically does not occur during steady-state operations, test results may not be consistent with the results of the more reliable dynamic test. EPA has considered the possibility of a system failing the dynamic test after the system has been brought back on-line or after the repairs have been made. EPA believes that if a system fails a dynamic test, appropriate action must be taken. EPA is proposing to allow the owners or operators of the system to attempt repairs a second time or take other corrective action that will result in an overall leak rate that does not exceed 35 percent per year. If none of these approaches is successful, then owners or operators of the system would be required to retrofit or retire the facility.

1. Requirement to Retrofit or Retire the Leaking Equipment

EPA is proposing that if the dynamic test indicates that the repairs have not been successfully completed, the owner would be required to retrofit or replace the equipment within one year of the failure to verify that the repairs had been successfully completed or within such longer time period as may be granted under this proposal. EPA believes that where the leak rates for industrial process refrigeration equipment continue to exceed 35 percent per year, it is necessary to retrofit or retire the facility, which could include replacing the existing equipment. Furthermore, within 30 days of a failed dynamic test, the owners or operators of the industrial process refrigeration facility would be required to submit to EPA a plan for retrofitting or retiring the leaking equipment. This requirement would be similar in scope to that described in § 82.156(i)(3) of the final rule published May 14, 1993. However, in this case, a copy of a retrofit/replace/ retire plan would be submitted to EPA, rather than just be available to EPA upon request. In addition, the plan would include information concerning the repairs attempted to date, and the parameters used for the unsuccessful dynamic test.

2. Option for Second Repair Attempt

EPA recognizes that in some cases the industrial process facility may discover, through its failed repair efforts and verification tests, another means for repairing the refrigerant leaks; or perhaps the repairs undertaken by the facility were merely not completed successfully. For example, if the leak was in the valve packing, it is possible that the gland nut was not tightened sufficiently. Therefore, repeating the process of tightening the gland nut may lead to a successful dynamic test. EPA also recognizes the large costs involved with retrofitting or retiring certain industrial process refrigeration systems. Therefore, due to the complexity of adequately finding and repairing leaks, EPA believes that in certain circumstances it may be reasonable to allow the owners and operators of the industrial process refrigeration equipment to have a second opportunity to complete repairs.

EPA is proposing that the owner or operator of an industrial process refrigeration unit be relieved of the obligation to retrofit or replace the equipment if a second attempt to repair the same leaks that were the subject of the first repair attempt is undertaken within 30 days of the failed dynamic verification test or within 120 days in the case of repairs for which an industrial process shutdown is necessary, and is successful subject to the same verification requirements as the first attempt at repair. The owner or operator would be required to notify EPA within 30 days of the successful dynamic verification test and the owner or operator would no longer be subject to the obligation to retrofit or replace the equipment that arose as a consequence of the initial failure to repair the leaks successfully. EPA believes that it is necessary to allow for a second repair attempt and believes that the speed with which this proposed second repair attempt must be accomplished will reasonably limit the amount of refrigerant potentially released to the atmosphere.

3. Option To Reduce Other Equipment Leaks

EPA believes it possible, that while the particular leak originally identified by the owners or operators of the industrial process facility cannot be successfully repaired, other leak sources could be eliminated or practices changed to reduce the annual leak rate to below 35 percent. EPA believes it is not possible to establish a zero leak rate

for most industrial process refrigeration equipment. Leaks will occur to some extent in locations such as threaded connections, valve packing, compressor shaft seals and flange seals. Industrial process refrigeration equipment contains many of these potential leak sources, many of which may not be directly accessible because they are packed in ice or insulation. These seals typically depend upon a polymer or other flexible material that is compressed between smooth metal surfaces to form a seal. A perfect seal is virtually impossible. Therefore, all such seals will have a small leak rate. Scratches on the metal surface, dirt at the sealing surface, embrittlement, abrasion/deformation from shaft rotation and valve manipulation, or gradual extrusion, deformation of the polymer under temperature cycling and pressure could all increase the leak rates. Leaks may also occur anywhere in the system where corrosion or metal fatigue can cause mechanical failure. If the refrigeration system operates under pressure, the refrigerant may be lost by direct leakage. If the system operates at less than atmospheric pressure, that is under partial vacuum, then noncondensable gases will be drawn into the system and small amounts of refrigerant may be lost when these noncondensables are vented through the purge valve.

Industrial process refrigeration systems have many potential sources of leaks. If a sufficient number of other leaks can be repaired creating a situation where the originally identified leak or leaks remain, but the overall leak rate has been successfully reduced to below 35 percent per year, EPA believes that the owner or operator of the facility has still in effect met its obligation under the rule.

EPA is more concerned with the percent of refrigerant being released than the actual source of the refrigerant leaked. Therefore, EPA is proposing that the owner or operator of an industrial process refrigeration unit be relieved of the obligation to retrofit or replace the equipment if, within 180 days of the failed dynamic verification test, the owner or operator establishes that the system's annual leak rate does not exceed 35 percent. If the equipment owner or operator establishes that the system's annual leak rate does not exceed 35 percent, the owner or operator would be required to notify EPA within 30 days of that determination and the owner or operator would no longer be subject to the obligation to retrofit or replace the equipment that arose as a consequence of the initial failure to repair the leaks successfully. The determination of whether the system's annual leak rate exceeds 35 percent would be determined in accordance with parameters identified by the owner or operator in its notice to EPA regarding the failure of the initial dynamic verification test discussed above.

EPA believes that this scheme for treating a failed dynamic test provides an appropriate level of flexibility for the affected community. Industrial process refrigerant equipment owners or operators would be required to retrofit or retire the system, unless a second attempt to repair the leaks is successful, or another method for achieving a leak rate of less than 35 percent per year can be achieved within the limited timeframes discussed above. Furthermore, the owners or operators would be required to maintain records and report information to EPA so that the Agency can establish that a viable approach is being followed by the owners or operators of the affected facilities.

EPA requests comments on this proposed scheme for allowing a flexible approach to be used by the owners or operators of industrial process refrigerant equipment that have failed a dynamic test. EPA also requests comments on ways in which to simplify or make more clear the differences between when a static or dynamic test is appropriate, or if other terminology would provide greater clarity.

G. Clarification of Levels to Which Leaks Must be Repaired Leak Rate

Through this action, EPA is also proposing a clarification to § 82.156(i)(1) and (2). As a part of the settlement agreement, EPA agreed that for industrial process and commercial sources, leaks needed to be repaired such that the leak rate was brought back to a level below the 35% annual rate. EPA believes that parallel clarification for comfort-cooling and commercial sources will provide equitability, rather than requiring a repair of ''all'' leaks for comfort-cooling systems.

As discussed above, EPA is proposing to revise the requirements for industrial process refrigeration equipment currently under § 82.156(i)(1) to require the owners and operators of this equipment to reduce leaks to a rate of less than 35 percent per year. However, EPA would allow these affected systems to operate as long as the leak rate does not exceed that amount. Therefore, EPA believes it is appropriate to also revise the regulations regarding commercial and comfort-cooling equipment to provide that the obligation to repair leaks triggered by an exceedance of the leak rate is an obligation to repair all leaks sufficient to bring the leak rate below 35% and 15%, respectively, per year, rather than to bring the leak rate down to zero.

Therefore, EPA proposes to clarify that in repairing leaks on equipment subject to the 15% leak rate, one must bring leaks down below the 15% threshold in order to comply and in repairing commercial refrigeration equipment, one must bring leaks down below the 35% threshold in order to comply. While it may be less difficult to locate and repair leaks found in comfort-cooling and commercial refrigeration appliances, to some extent, many of these systems may also contain leak sources that can be difficult to locate and repair. This may be particularly true for certain types of commercial refrigeration appliances.

EPA requests comment on the proposed modification to the current language in § 82.156(i)(1) and (2).

H. Extension for Retrofitting a Facility

EPA believes that it may be reasonable to permit additional time beyond the one year established by the current regulations for the retrofitting of certain industrial process refrigeration equipment. EPA believes there are specific concerns relating to the need for special design, engineering, ordering and installation difficulties for some industrial process refrigeration equipment. It may take weeks or in some cases months to determine available options and develop specifications before it is possible to design a retrofitted facility and subsequently install the equipment. Even when special design plans are not necessary and the repairs may appear simple, the uniqueness of these large systems may dictate that new or replacement parts cannot be obtained in time to meet either 30-day repair requirement or the one-year retrofit deadline.

Parts for other types of systems, such as comfort-cooling, are more likely to be mass-produced, widely distributed, readily transportable and capable of quick installation. Parts for industrial process refrigeration equipment are often more difficult to obtain and install. If a part has to be specially manufactured, special-ordered, or fabricated on-site, the company may not be able to complete the repair within one year. For example, one company has indicated that its supplier is quoting 44–46 weeks for the delivery of a 1000-ton water chiller, with a charge of approximately 10,000 pounds of refrigerant. The company estimates that it needs 5–7 weeks to negotiate an

acceptable proposal prior to ordering the equipment. Installation may take 10–14 weeks. Therefore, this company believes it will take 59–67 weeks to replace this pre-packaged industrial unit. Another company has a facility with four process refrigeration systems for chlorine production, each with a compressor driven by a 4,000 horsepower motor and refrigerant charge of approximately 175,000 pounds. These are massive systems that were individually engineered for the needs of the plant and any changes will also have to be engineered on an individual basis. The owner believes that even under ideal circumstances retrofitting the facility may take three years.[2]

EPA is proposing to revise § 82.156(i)(3) to allow more than one year to complete the retrofit of industrial process refrigeration equipment in certain circumstances. While the scenarios described above may justify more than one year to retrofit a facility, EPA does not believe additional time is always necessary. Therefore, EPA intends to only allow for additional time when the owners or operators of the industrial process refrigeration equipment can provide information detailing the need for additional time in accordance with the proposed requirements described below.

1. Additional Time Based on Regulatory Delays and/or the Need for a Suitable Replacement

EPA is proposing that additional time, to the extent reasonably necessary, would be allowed due to delays occasioned by the requirements of other applicable federal, state, or local regulations, or due to the unavailability of a suitable replacement refrigerant with a lower ozone depletion potential. To be a suitable replacement, a refrigerant would have to be acceptable under section 612(c) of the Act and implementing regulations, compatible with other materials with which it may come into contact, and be able to achieve the temperatures required for the process in a technically feasible manner.

If these circumstances apply, the owner or operator of the facility would have to notify EPA within six months after the 30-day period following the discovery of an exceedance of the 35% leak rate. Records that would provide evidence that other regulations or the unavailability of a suitable alternative refrigerant prevent retrofit or replacement within one year must be submitted to EPA to allow EPA to determine that these provisions apply and assess the length of time necessary to complete the work. EPA proposes that it notify the owner or operator of its determination within 60 days of submittal. Specific recordkeeping requirements are discussed later in this subsection. EPA proposes that such records be maintained by the owner or operator and kept on-site.

EPA has already discussed examples of the types of other federal, state, or local regulations that may limit the ability of a facility to retrofit within one year. One example involved delays that would impact the ability of any facility in California that intended to retrofit using ammonia. Because ammonia is treated as a hazardous substance under the California RMPP program, companies need to prepare risk management plans that meet the approval of the local fire department before ammonia can be brought to the site. For one company, the process of receiving such approval took six months. Since other activities may be delayed or revised based on the acceptability or unacceptability of the risk management plans, more than one year may be necessary to complete retrofit activities.

Regulations promulgated under section 612 of the Act, known as the Significant New Alternatives Policy (SNAP) program, establish acceptable and unacceptable alternatives for particular end-uses, including refrigeration. The SNAP program regulations were published on March 18, 1994 (59 FR 13045). Subsequently, additional alternatives were approved on August 26, 1994 (59 FR 44240). To date, several replacement substances with lower ozone-depleting potentials have been listed as acceptable by the Agency. However, there has been difficulty in locating acceptable alternatives for R–22 systems that have flooded evaporators.

A flooded-evaporator system uses a pool of refrigerant, which absorbs heat as it vaporizes. All potential replacements to date are non-azeotropic in these systems, meaning they consist of components that do not vaporize uniformly. This has the effect of making the refrigeration system function like a distillation column, and greatly reduces the system's cooling capacity to the point where it probably will not be able to perform its intended function. In addition, a replacement refrigerant must be compatible with the manufacturing process to be cooled. There is always the potential for leaks to occur that could result in the intermingling of the refrigerant and the process chemicals. If an inappropriate chemical is selected as a refrigerant, this potential intermingling could cause a chemical reaction that would damage or destroy refrigeration equipment or process equipment and potentially create a risk to human health or the environment.

Any refrigerant may theoretically be capable of achieving virtually any operating temperature; however, the amount of energy required to compress and circulate each refrigerant at given temperatures varies widely. It is not uncommon to determine that one refrigerant may require four times as much horsepower per ton of refrigeration capacity as another. The lower the temperature, the wider the difference. At any given temperature, particularly extremely low temperatures, some refrigerants may be able to utilize lower-powered, more efficient compressors while other refrigerants would need extremely large, powerful multiple-stage compressors. Physical constraints, such as the size of the room into which the refrigeration system must fit, may need to be considered. Therefore, the horsepower requirements could make a particular refrigerant impractical as a replacement.

EPA believes that it is appropriate to require the owners and operators of industrial process refrigeration equipment needing more than one year to complete retrofitting the system to maintain certain records and submit information to the Agency. Through this action, EPA is proposing that if additional time is necessary due to regulatory delays or the need for a suitable replacement, the owner or operator of the facility would have to notify EPA within six months after the 30-day period following the discovery of an exceedance of the 35 percent leak rate. Records necessary to allow a determination that these provisions apply and that document the length of time necessary to complete the work would need to be maintained. EPA believes that these records and the information submitted to EPA should include the following:

(1) Identification of the industrial process facility;

(2) Leak rate;

(3) Method used to determine the leak rate and full charge;

(4) Date a leak rate of 35 percent or greater was discovered;

(5) Location of leaks(s) to the extent determined to date;

(6) Any repair work that has been completed thus far and the date that work was completed;

(7) Plan to complete the retrofit or replacement of the system;

[2] Information EPA has received to date indicates that this system will most likely take the longest of those reviewed to retrofit.

(8) Reasons why more than one year is necessary to retrofit or replace the system;

(9) Date of notification to EPA;

(10) Estimate of when retrofit or replacement work will be completed;

(11) If time changes for original estimates, document reason for changes; and

(12) Date of notification to EPA of timing change. The last two items would only be required to be submitted as needed for a timing change.

EPA believes that most of the information included in these proposed recordkeeping and reporting requirements may be routinely maintained by the owners and operators of industrial process facilities. Where the records may not be routinely kept, the information EPA is proposing to require should not pose an undue burden to the affected community. Moreover, since EPA must base a determination of whether the circumstances faced by the owners or operators of the industrial process refrigeration equipment are such that additional time beyond the one year is reasonable, EPA requires this information in order to make an informed determination.

EPA requests comments on the need to provide additional time for the completion of retrofit activities for industrial process refrigeration equipment based on other applicable regulations and/or unavailability of acceptable refrigerants. In addition, EPA requests comments on the proposed recordkeeping and reporting requirements discussed in this section.

2. Additional Time Based on the Unavailability of Necessary Parts

Through this action, EPA is proposing that an additional one-year period beyond the initial one-year retrofit period be allowed for industrial process refrigeration equipment if four criteria are met: (1) The new or retrofitted refrigeration system is custom-built (meaning if it or any of its critical components cannot be purchased and/or installed without being specifically designed), fabricated and/or assembled to satisfy a specific set of industrial process conditions; (2) the supplier of the system or one or more of its crucial components has quoted a delivery time of more than 30 weeks from when the order is placed; (3) the owner or operator notifies EPA within six months of the expiration of the 30-day period following the discovery of an exceedance of the 35 percent leak rate to identify the owner or operator, describe the system involved, explain why more than one year is needed, and demonstrate that the first two criteria are met; and (4) the owner or operator maintains records adequate to allow a determination that the criteria are met.

EPA believes that a new or retrofitted refrigeration system should be considered custom-built if it or any of its critical components cannot be purchased and/or installed without being specifically designed, fabricated and/or assembled to satisfy a specific set of industrial process conditions. A critical component could be defined as a component without which an industrial process refrigeration system will not function, will be unsafe in its intended environment, or will be subject to failures that would cause the industrial process served by the refrigeration system to be unsafe. This proposed definition includes the need to consider the intended environment because of the potential uniqueness of conditions under which the system is required to operate. For example, some refrigeration systems must be operated in the presence of potentially corrosive substances, or flammable or combustible atmospheres. It may be necessary to ensure containment of toxic chemicals, or to ensure that potentially reactive chemicals are separated from each other. There may be high pressures or temperatures that could pose physical hazards if not restrained.

EPA intends for the term unsafe to include risks to human health and the environment. The term potentially could also refer to risks associated with property loss. For example, if cooling is needed to prevent runaway polymerization of process chemicals, then the sudden failure of the system could lead to an uncontrolled exothermic reaction, which could include a fire or potentially an explosion. While this clearly poses risks to human health and the environment, other operating conditions may be more likely to lead to property damage. EPA requests comments on this proposed definition of critical components and whether property damage should be included as part of this definition.

The industrial process refrigeration sector uses refrigeration in an extremely broad range of cooling capacities and temperature levels as well as a variety of applications. These conditions dictate the design, fabrication, and/or assembly of the refrigeration system and are responsible for the sheer diversity of mechanical specifications and equipment designs that comprise the industrial process refrigeration sector. These process conditions vary greatly from manufacturing process to manufacturing process. Below are examples of various process conditions that may need to be considered.

In the industrial sector, refrigeration systems are frequently used to cool highly corrosive product streams. As a result heat exchange evaporator tubes must be constructed of special materials and heavy wall thickness.

In the industrial sector, high pressures and high temperatures, particularly on the process side, are frequently encountered. As a result, process-side construction may have to withstand pressures seldomly encountered in commercial service. In addition, an extreme difference in temperature between the process inlet and outlet is common and requires consideration to be given to thermal stresses.

Industrial manufacturing operations with extremely low temperature requirements can result in high viscosities on the process side of the equipment. Although in the commercial sector, evaporators are designed with tubes of small inside diameter to achieve optimum heat transfer performance, tubes with extra-large inside diameters may be required to handle viscous streams. These high viscosities may require that an evaporator be equipped with rotating internal scrapers within tubes to provide for continual scraping of the heat transfer wall and facilitate the flow of the high viscosity fluid through the evaporator.

Manufacturing operations may be batch or continuous. A batch operation implies that operating conditions are expected to change over time usually in a repetitive pattern and therefore, the system must be designed for all extremes. In a continuous operation, temperatures, pressure, flow levels, composition, and other process parameters do not change with time.

Some manufacturing processes may yield products that are highly corrosive, highly viscous, or under high pressure and therefore not well suited for use in a refrigerant evaporator. Conditions such as these may require that the process fluid be cooled by an intermediate liquid, such as water that is itself cooled by evaporating the refrigerant. The selection of the liquid will be driven by the process condition. Some areas of the country have tight restrictions on water usage. In situations where water is utilized to cool equipment, river, lake, or well-water may provide the most economical cooling medium. In these instances, water treatment and special construction materials may be necessary.

EPA believes that the above scenarios represent specific sets of industrial

process conditions encountered by owners and operators of industrial process refrigeration equipment. However, EPA believes there are many other similar types of conditions that other industrial process refrigeration equipment owners or operators face. Therefore, this list of potential conditions is not intended to be all-inclusive.

EPA believes it is appropriate to provide additional time when a supplier of the system or one or more of its critical components has quoted a delivery time of more than 30 weeks from when the order is placed, assuming the order was placed in a timely fashion. EPA realizes that it may not be possible to specify a date by which the parts must be ordered. This is true because of the need to identify the specific leak point, determine the cause, decide appropriate action, create specifications and obtain any necessary modification approvals from facility managers and/or other regulatory entities. EPA believes that the 30-week time frame acknowledges that other activities, such as designing, installing, testing, etc. will more than fill up the remainder of the year. Thus, no matter when these facilities order the parts, if the suppliers quote 30 weeks or longer, they are already in the two-year time track for retrofitting or replacing the system. EPA believes that facilities have an incentive to expedite repairs, retrofits or replacements in order to avoid losing valuable refrigerant and to continue production under an efficiently running system. However, EPA does believe that, while it proposes additional time if delivery time is quoted as 30 weeks or more, a log of when the parts were ordered should be maintained by the company. This is especially critical for facilities that may later request an extension beyond the two years.

The owner or operator would be required to notify EPA within six months of the expiration of the 30-day period following the discovery of an exceedance of the 35 percent leak rate, to identify the owner or operator, describe the system involved, explain why more than one year is needed, and demonstrate that the first two criteria discussed above are met; and the owner or operator would be required to maintain records adequate to allow a determination that the criteria are met. This information would be maintained and reported using the recordkeeping scheme described in the section II.H.1. All of the information described here would fit within that scheme. EPA believes using the same recordkeeping and reporting requirements will streamline the requirements for the affected community and will lessen the regulatory burden.

EPA requests comment on the need to provide one year beyond the initial one year to complete all retrofitting or replacement activities when the facility is custom-built and when a supplier is quoting more than 30 weeks for delivery of a crucial component. EPA also requests comments on the associated recordkeeping and reporting requirements discussed in this section.

3. Additional Time Beyond the One Additional Year

EPA believes that in an extremely limited number of cases additional time beyond the one additional year may be necessary to retrofit or replace a system. Through this action, EPA is proposing that if more than one additional year is needed, the owner may request EPA to extend the deadline for completing all retrofit or replacement action. EPA proposes that such a request be submitted to EPA before the end of the ninth month of the additional year that was granted to retrofit, replace or retire the system. The request would be required to include revisions to that information submitted for the first additional year as proposed under § 82.166(o). Unless EPA objects to the request within 30 days of receipt, it would be deemed approved.

As EPA has earlier noted, one facility estimates that it will take three years to retrofit or replace its refrigeration units. These particular units have refrigerant charges of approximately 175,000 pounds each and are used in the processing of chlorine. The owner of that system has many other facilities that will be able to complete all retrofit or replacement work without need for this additional time extension. While EPA believes that in certain cases additional time may be necessary, EPA is concerned with scope of such an extension. As noted in the discussion concerning ordering parts, EPA would not favor an extension caused by a company delaying to place orders for components or other similar scenarios. EPA intends this extension to be granted only in cases where the actual nature of the retrofit or replacement activities is such that the additional time beyond the one year is crucial. The submittal of revised information requesting additional time under this provision could be consistent with submittal of information requesting additional time beyond the one-year timeframe. As stated in the discussion regarding the need for an additional year to complete retrofit or replacement activities, EPA believes that using the same recordkeeping and reporting scheme for all retrofit extensions lessens the burden for the affected community.

EPA requests comment on the need to provide additional time beyond the one additional year for industrial process refrigeration equipment, where necessary. In addition, EPA requests comments on the potential number of facilities and the potential reasons that may be cited for requesting such an extension. Furthermore, EPA requests comments on the associated recordkeeping and reporting requirements.

I. Allowing Appliances To Be Pressurized to Slightly Above 0 Psig

Members of the regulated community have requested that EPA revise requirements relating to oil changes. However, members of industry have expressed concern with respect to the status of small quantities of refrigerant that may escape from the appliance itself while oil is being removed.

Sections 82.156 and 82.158 call for evacuation of the refrigerant from the appliance, to a specified level of vacuum (or to atmospheric pressure, for non-major repairs that are not followed by an evacuation of the appliance to the environment). However, new information indicates that these levels of vacuum may often be impractical during oil changes. A small positive pressure is needed during oil changes, to force the oil from its reservoir. Oil will not flow from a reservoir that is under vacuum. Therefore, EPA is proposing to allow owners or operators to evacuate the appliance to slightly above atmospheric pressure specifically, to a pressure not exceeding 5 psig to perform oil changes. EPA believes that this approach will reduce emissions of ozone-depleting refrigerants to the atmosphere, and thus will have an overall positive impact on the environment. There are three principal reasons why this approach should produce an environmental benefit.

First, oil changes are a necessary part of preventive maintenance. If owners or operators are required to draw a deep vacuum before oil changes, that will add significant delay and expense, serving as a disincentive to regular oil changes. If appliances are not regularly maintained, they are more likely to break down and increase their emissions of refrigerant. They will also be more subject to catastrophic failures that could result in release of the entire refrigerant charge. Second, if a deep vacuum is required, air and moisture will be drawn into the system and will need to be purged later, which will result in emissions of refrigerant. This can be minimized by filling the

appliance with an inert gas such as nitrogen. However, the nitrogen would then need to be purged (releasing entrained refrigerant) before the appliance can be restored to operation.

Any environmental costs, i.e., additional emissions that accompany this procedure are likely to be small. When an appliance is brought nearly to atmospheric pressure, the great majority of the ozone-depleting refrigerants will be drawn from the compressor oil and recovered. This means there will not be significant emissions from the compressor oil after the oil has been removed from the appliance.

During oil changes, some quantity of refrigerant will be emitted from two different sources: from the oil that was removed, and from the appliance itself. Section 608(c) of the Act makes it unlawful to knowingly vent class I or class II refrigerants from appliances during servicing and maintenance, other than de minimis releases associated with good-faith efforts to recover the refrigerant. The regulation specifies that when the recovery procedures identified in §§ 82.156 and 82.158 are followed, any remaining emissions of refrigerant will be de minimis. EPA has thus determined that emissions of refrigerant from the oil are not subject to this prohibition.

EPA is thus proposing to revise requirements of § 82.156(a)(2)(i) to allow appliances to be pressurized up to 5 psig in order to change oil in industrial process refrigeration equipment.

J. Treatment of Purged Refrigerant

EPA would like to clarify that the Agency interprets the 35 percent leak rate in the regulations as not including emissions of purged refrigerant that are destroyed, if their destruction is accounted for and can be verified by records maintained by the owners or operators of the industrial process refrigeration equipment. If purged refrigerant is destroyed using one of the five destruction technologies approved by the Parties to the Montreal Protocol, EPA can consider that refrigerant to have been destroyed and therefore, not part of the leak rate for the system. These destruction technologies are liquid injection incineration, reactor cracking incineration, gaseous fume oxidation, rotary kiln incineration and cement kiln.

Industrial process refrigerant systems may vary greatly with regard to their use of purges. In considering purges, it is important to note the flow rate and the composition of the vent stream. For example, systems with a flow that is constant allow for the flow to be measured automatically. Systems that have intermittent mechanical purge units, or those with a batch production process may have greater variability and need a greater frequency of recording the amount of refrigerant purged.

EPA believes it is appropriate that in determining the rate of refrigerant loss, the owner or operator may exclude quantities of refrigerant sent for destruction by using an approved destruction technology under the Montreal Protocol. In deciding whether credit shall be given for the entire quantity sent for destruction or only for a percent of the actual refrigerant destroyed, the applicable provisions of the phaseout regulations (58 FR 65018) shall apply. The phaseout rule states that if the technology not only is approved under the Montreal Protocol, but also meets or exceeds a 98% destruction efficiency (DE), then 100% of the material may be considered destroyed. Below a 98% DE, credit is given only for the actual percentage destroyed.

Facilities that wish to utilize this exclusion would need to maintain records that are sufficient to support the amount of refrigerant claimed as sent for destruction. All records should be based on a monitoring strategy that will provide reliable data to demonstrate that the amount of refrigerant sent for destruction corresponds with the amount of refrigerant purged. Records should include the flow rate, quantity or concentration of the refrigerant in the vent stream, and periods of purge flow. An owner or operator using this exclusion should submit information to EPA that includes the identification of the facility and a contact person, including the address and telephone number. A general description of the refrigerant system should also be submitted, focusing on aspects of the system relevant to the purging of refrigerant and subsequent destruction, in addition to a description of the methods used to determine the quantity of refrigerant sent for destruction and type of records that are being kept by the facility. The frequency of monitoring and data-recording shall also be included. A description of the control device, and its destruction efficiency would be required. This information should be submitted within 60 days after the first time the exclusion is utilized by a facility. It should also be included in any reporting requirements required for compliance with the leak repair and retrofit requirements for industrial process refrigeration equipment in order to verify accurate leak rates.

EPA requests comments on the appropriateness of exempting purged refrigerant that has been destroyed using one of the approved destruction technologies under the Montreal Protocol. In addition, EPA requests comments on the recordkeeping and reporting procedures with which EPA would expect the owners or operators of industrial process refrigerant equipment to comply, if they choose to utilize an exemption for purged refrigerant that has been destroyed.

K. Temporarily Mothballing Equipment Prior to Repairing Leaks

EPA understands that for some of the equipment subject to the leak repair requirements promulgated under § 82.156(i), it may be possible for the owner or operator of the appliance to discontinue use of the equipment on a temporary basis, perhaps on a seasonal basis. This may also be true for equipment other than industrial process refrigeration appliances that are integrally linked to a manufacturing process. For example, it may be reasonable to shut down or mothball a comfort-cooling system for a period of time.

This type of system mothballing would not be the same as a process shutdown undertaken to repair particular leaks found in industrial process refrigeration or perform other maintenance activities. Also, this type of shutdown or mothballing is not the same as being taken off-line due to a power outage or event. A system mothballing is an intentional shutting down of the refrigerant appliance undertaken for an extended period of time by the owners or operators of that facility—not for the purposes of servicing or repairing the appliance—where the refrigerant has been evacuated.

If a facility is temporarily mothballed, EPA believes it is appropriate to suspend the time-relevant repair and/or retrofit requirements while the facility is effectively inoperative. For example, if a comfort-cooling system with over 50 pounds of refrigerant has a leak rate of more than 15 percent per year, the leak or leaks must be repaired or the system must be retrofitted within one year. However, if after discovery of the exceedance of the leak rate, the owner of the system voluntarily mothballs the system for a period of several months or years, EPA believes it is appropriate to suspend the need to repair leaks or retrofit the system during the same time period. Therefore, if the system operated for five days after discovery of the exceedance of the leak rate, then shut down for 2 months, when the system returned to operating, the owner or operator will still have 25 days to repair

the leaks. The necessary applicable static and dynamic tests would need to be employed.

EPA believes that while the system is mothballed, only a limited amount of refrigerant, if any, is likely to be released to the atmosphere from the leak or leaks, since the appliance or isolated section of the appliance has been evacuated per requirements of § 82.156 of subpart F. Therefore, there is no environmental benefit for maintaining required timelines for completion of repairs when the system is not in operation in a mothballed situation. EPA requests comments on providing a de facto extension to the owners or operators of systems subject to the leak repair requirements promulgated under § 82.156(i) that voluntarily mothball their systems.

L. Proposed Extension for Federally-Owned Commercial and Comfort-cooling Refrigeration Equipment

EPA has received new information indicating that certain federal entities periodically have difficulty complying with the 30-day leak repair requirement and the one-year retrofit/retirement requirement for leaky refrigeration equipment subject to the requirements of § 82.156(i). This equipment does not appear to be unique in design; however, many of these systems are older. The difficulties appear to stem from the need to procure parts for these systems. The concerns are based on the need to follow specific government procurement practices that may be more cumbersome than those faced by private sector entities. These procurement practices are set forth by statute, the Federal Acquisition Regulations, and often specific Agency procedures.

EPA has received information from one federally-owned entity in this regard, claiming the need to provide an exemption for federally-owned equipment subject to the leak repair requirements promulgated under § 82.156(i) when mandated procurement practices prevent timely delivery of parts. EPA understands that in addition to the fact that older parts may be more difficult to obtain and may be more costly, the federal procurement process may further delay acquisition of parts in timely fashion. EPA requests comments that would indicate whether this situation is unique to the federal government or if other situations unique to the federal government could justifiably merit an extension.

If a government facility believes it will take longer than the 30 days to complete repairs or more than one year to complete retrofit or retirement activity, EPA is proposing that the facility be able to submit a request for extensions parallel to those outlined in today's action for industrial process refrigeration systems, but based on the hindrance of federal procurement requirements. If additional time is granted, EPA also proposes that testing and documentation should occur, parallel to those for industrial process refrigeration systems.

In light of the above discussion, EPA is proposing today to provide extensions to the leak repair provisions for federally-owned commercial and comfort-cooling systems. However, EPA is requesting comments that may shed light on additional information in this regard. EPA is particularly interested in how the FAR could negatively affect compliance with the requirements promulgated under § 82.156(i).

III. Summary of Supporting Analysis

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that this proposed amendment to the final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

EPA believes that any impact that this proposed amendment will have on the regulated community will serve only to provide relief from otherwise applicable regulations, and will therefore limit the negative economic impact associated with the regulations previously promulgated under Section 608. An examination of the impacts on small entities was discussed in the final rule (58 *FR* 28660). That final rule assessed the impact the rule may have on small entities. A separate regulatory impact analysis was developed. That impact analysis accompanied the final rule and is contained in Docket A–92–01. I certify that this proposed amendment to the refrigerant recycling rule will not have any additional negative economic impacts on any small entities.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1626.03) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St., SW. (2136); Washington, DC 20460 or by calling (202) 260–2740.

This collection of information has an estimated reporting burden averaging 10 hours per response and an estimated recordkeeping burden averaging 15 minutes per response. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., SW. (2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' The final Rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 82

Environmental protection, Air pollution control, Dynamic test, Industrial process refrigeration, Leak repair, Recordkeeping requirements, Static test.

Dated: January 9, 1995.

Carol M. Browner,

Administrator.

Part 82, chapter I, title 40, of the code of Federal Regulations, is amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.152 is amended by removing the paragraph designations from the definitions and placing them in alphabetical order and by adding the following definitions in alphabetical order:

§ 82.152 Definitions.

* * * * *

Critical component means for the purposes of § 82.156(i) a component without which an industrial process refrigeration system will not function, will be unsafe in its intended environment, and/or will be subject to failures that would cause the industrial process served by the refrigeration system to be unsafe.

Custom-built means for the purposes of § 82.156(i) if the equipment or any of its critical components cannot be purchased and/or installed without being specifically designed, fabricated and/or assembled to satisfy a specific set of industrial process conditions.

* * * * *

Dynamic test means for the purposes of § 82.156(i) those tests that involve checking the repairs within 30 days of returning to steady-state operating characteristics. Dynamic tests for equipment from which the refrigerant charge has been evacuated means a test conducted after the appliance or portion of the appliance has resumed operation at steady-state or normal operating conditions of temperature and pressure. A dynamic test with respect to repairs conducted without evacuation of the refrigerant charge means a reverification test conducted after the static test. Where a system is not evacuated, it is only necessary to conclude any required changes in pressure, temperature or other conditions to return the system to a steady-steady for operations.

Full charge means for the purposes of § 82.156(i) the amount of refrigerant required for steady-state operations of the industrial process refrigeration equipment as determined using one of the following three methods or a combination of one of the following three methods:

(1) The use of the equipment manufacturers' determination of the correct full charge for the equipment;

(2) Determining the full charge based on the use of appropriate calculations where the owners or operators of a system are able to calculate the full charge based on component sizes, density of refrigerant, volume of piping, and other relevant considerations; and/or

(3) The use of actual measurements by the owners or operators of the amount of refrigerant added or evacuated from an industrial process refrigeration system.

* * * * *

Process shutdown means for the purposes of § 82.156(i) when, for purposes such as maintenance or repair, an industrial process or facility temporarily ceases to operate or manufacture whatever is being produced at the particular facility.

* * * * *

Static test means for the purposes of § 82.156(i) those leak tests that are conducted as soon as practicable after the repair is completed. A static test with regard to the leak repairs that require the evacuation of the equipment or portion of the equipment means a test conducted prior to the replacement of the full refrigerant charge and before the appliance or portion of the appliance has reached operation at normal working conditions of temperature and pressure. A static test with regard to repairs conducted without the evacuation of the refrigerant charge means a test conducted as soon as practicable after the conclusion of the repair work.

Steady-state operating characteristics or conditions means for the purposes of § 82.156(i) operating at temperatures, pressures, fluid flows, speeds and other characteristics that would normally be expected for a given process load and ambient condition. Steady-state operating characteristics are marked by the absence of atypical conditions affecting the operation of the refrigeration system.

Suitable replacement refrigerant means for the purposes of § 82.156(i)(2)(i) that a refrigerant is acceptable under section 612(c) of the Clean Air Act Amendments of 1990 and all regulations promulgated under that section, compatible with other materials with which it may come into contact, and be able to achieve the temperatures required for the affected industrial process in a technically feasible manner.

* * * * *

System mothballing means the intentional shutting down of a refrigerant system undertaken for an extended period of time by the owners or operators of that facility, not for the purposes of servicing or repairing the appliance, where the refrigerant has been evacuated from the appliance or the isolated section of the appliance, at least to atmospheric pressure.

* * * * *

3. Section 82.156 is amended by revising paragraphs (a)(2)(i)(A) and (a)(2)(i)(B), adding a new paragraph (a)(2)(i)(C), and revising paragraph (i) to read as follows:

§ 82.156 Required practices.

* * * * *

(a) * * *

(2)(i) * * *

(A) Be evacuated to a pressure no higher than 0 psig before it is opened if it is a high- or very high-pressure appliance;

(B) Be pressurized to 0 psig before it is opened if it is a low-pressure appliance. Persons pressurizing low-pressure appliances that use refrigerants with boiling points at or below 85 degrees Fahrenheit at 29.9 inches of mercury (standard atmospheric pressure), (e.g., CFC–11 and HCFC–123), must not use methods, such as nitrogen, that require subsequent purging. Persons pressurizing low-pressure appliances that use refrigerants with boiling points above 85 degrees Fahrenheit at 29.9 inches of mercury, e.g., CFC–113, must use heat to raise the internal pressure of the appliance as much as possible, but may use nitrogen to raise the internal pressure of the appliance from the level attainable through use of heat to atmospheric pressure; or

(C) In the case of oil changes, be evacuated or pressurized to a pressure no higher than 5 psig, before it is opened.

* * * * *

(i)(1) Owners of commercial refrigeration equipment must have leaks repaired if the equipment is leaking at a rate such that the loss of refrigerant will exceed 35 percent of the total charge during a 12-month period in accordance with paragraph (i)(9) of this section, except as described in paragraphs (i)(6) and (i)(8) of this section and paragraphs (i)(1)(i), (i)(1)(ii), and (i)(1)(iii) of this section. Repairs must bring the annual leak rate to below 35%.

(i) If the owners or operators of the federally-owned commercial refrigerant equipment determine that the leaks cannot be repaired in accordance with paragraph (i)(9) of this section and that an extension in accordance with the requirements discussed in this paragraph (i)(1)(i) of this section apply, they must document all repair efforts, and notify EPA of their inability to comply within the 30-day repair requirement, and the reason for the inability must be submitted to EPA in accordance with § 82.166(n).

(ii) Owners or operators of federally-owned commercial refrigeration equipment may have more than 30 days to repair leaks if federal procurement procedures make a repair within 30 days impossible. Only the additional time needed to receive delivery of the necessary parts will be permitted.

(iii) Owners or operators of federally-owned commercial refrigeration equipment requesting or who are granted time extensions under this paragraph must comply with paragraphs (i)(3) and (i)(4) of this section.

(2) The owners or operators of industrial process refrigeration equipment must exert best efforts to repair the leaks if the equipment is leaking at a rate such that the loss of refrigerant will exceed 35 percent of the total charge during a 12-month period in accordance with paragraph (i)(9) of this section, except as described in paragraphs (i)(6) and (i)(7), and paragraphs (i)(2)(i) and (i)(2)(ii) of this section. Repairs must bring annual leak rates to below 35%. If the owners or operators of the industrial process refrigerant equipment determine that the leaks cannot be repaired in accordance with paragraph (i)(9) of this section and that an extension in accordance with the requirements discussed in this paragraph apply, they must document all repair efforts, and notify EPA of their inability to comply within the 30-day repair requirement, and the reason for the inability must be submitted to EPA in accordance with § 82.166(n).

(i) The owners or operators of industrial process refrigeration equipment may have more than 30 days to repair leaks if the necessary parts are unavailable or if requirements of other applicable federal, state, or local regulations make a repair within 30 days impossible. Only the additional time needed to receive delivery of the necessary parts or comply with the pertinent regulations will be permitted.

(ii) Owners of industrial process refrigeration equipment will have a 120-day repair period, rather than a 30-day repair period, to repair leaks in instances where an industrial process shutdown is needed to repair a leak or leaks from industrial process refrigeration equipment.

(3) The owners or operators of refrigeration equipment who are granted additional time under paragraphs (i)(1), (i)(2), (i)(5), (i)(7), and (i)(8) of this section must ensure that the repair efforts performed be those that sound engineering judgment indicates will be sufficient to bring the leak rates below the applicable allowable annual rate, that when a process shutdown has occurred or when repairs have been made while a system is mothballed, a static test be conducted at the conclusion of the repairs and that a dynamic test be conducted within 30 days of completing the repairs or within 30 days of bringing the system back on-line, if taken off-line, but no sooner than when the system has achieved steady-state operating characteristics.

(i) Refrigeration equipment may not be brought back on-line, if taken off-line, until a static test indicates that the repairs undertaken in accordance with paragraphs (i)(1) (i), (ii), and (iii), or (i)(2) (i) and (ii), or (5)(i), (ii) and (iii) of this section, have been successfully completed to bring the leak rate below the applicable allowable annual rate.

(ii) If the dynamic test indicates that the repairs to refrigeration equipment have not been successfully completed, the owner must retrofit or replace the equipment in accordance with paragraph (i)(6) of this section within one year of the failure to verify that the repairs had been successfully completed or such longer time period as may apply in accordance with paragraphs (i)(7)(i), (ii) and (iii) or (i)(8) (i) and (ii) of this section. The owners and operators of refrigeration equipment are relieved of this requirement if the conditions of paragraphs (i)(3)(iv) or (i)(3)(v) of this section are met.

(iii) The owner or operator of refrigeration equipment that fails a dynamic test must notify EPA of the failure within 30 days of conducting the failed dynamic test in accordance with § 82.166(n).

(iv) The owner or operator is relieved of the obligation to retrofit or replace the refrigeration equipment as discussed in paragraph (i)(6) of this section if a second attempt to repair the same leaks that were the subject of the first repair attempt is successfully completed and subject to the same verification requirements of paragraphs (i)(3) (i) and (ii) of this section. The owner or operator is required to notify EPA within 30 days of the successful dynamic verification test in accordance with § 82.166(n) and the owner or operator would no longer be subject to the obligation to retrofit or replace the equipment that arose as a consequence of the initial failure to repair the leaks successfully.

(v) The owner or operator of refrigeration equipment is relieved of the obligation to retrofit or replace the equipment in accordance with paragraph (i)(6) of this section if within 180 days of the failed dynamic verification test, the owner or operator establishes that the system's annual leak rate does not exceed the applicable allowable annual leak rate, in accordance with paragraph (i)(4) of this section. If the equipment owner or operator establishes that the system's annual leak rate does not exceed the applicable allowable annual leak rate, the owner or operator is required to notify EPA within 30 days of that determination in accordance with § 82.166(n) and the owner or operator would no longer be subject to the obligation to retrofit or replace the equipment that arose as a consequence of the initial failure to repair the leaks successfully.

(4) In the case of a failed dynamic verification test, the determination of whether refrigeration equipment has an annual leak rate that exceeds the applicable allowable annual leak rate will be determined in accordance with parameters identified by the owner or operator in its notice to EPA regarding the failure of the initial dynamic verification test and where those parameters are acceptable to EPA. The determination must be based on the amount of refrigerant contained in the full charge for the affected industrial process refrigeration equipment. The leak rate determination parameters will be considered acceptable unless EPA notifies the owners or operators within 30 days.

(5) Owners of appliances normally containing more than 50 pounds of refrigerant and not covered by paragraph (i)(1) or (i)(2) of this section must have leaks repaired if the system is leaking at a rate such that the loss of refrigerant will exceed 15 percent of the total charge during a 12-month period in accordance with paragraph (i)(9) of this section, except as described in paragraphs (i)(6) and (i)(8) of this section and paragraphs (i)(5)(i), (i)(5)(ii) and (i)(5)(iii) of this section. Repairs must bring the annual leak rate to below 15%.

(i) If the owners or operators of federally-owned comfort-cooling refrigerant equipment determine that the leaks cannot be repaired in accordance with paragraph (i)(9) of this section and that an extension in

accordance with the requirements discussed in paragraph (i)(5) of this section apply, they must document all repair efforts, and notify EPA of their inability to comply within the 30-day repair requirement, and the reason for the inability must be submitted to EPA in accordance with § 82.166(n).

(ii) Owners or operators of federally-owned comfort-cooling refrigeration equipment may have more than 30 days to repair leaks if federal procurement procedures make a repair within 30 days impossible. Only the additional time needed to receive delivery of the necessary parts will be permitted.

(iii) Owners or operators of federally-owned comfort-cooling refrigeration equipment requesting or who are granted time extensions under this paragraph must comply with paragraphs (i)(3) and (i)(4) of this section.

(6) Owners or operators are not required to repair the leaks defined in paragraphs (i)(1), (2) and (5) of this section if, within 30 days, they develop a one-year retrofit or retirement plan for the leaking equipment. This plan (or a legible copy) must be kept at the site of the equipment. The original must be made available for EPA inspection on request. The plan must be dated and all work under the plan must be completed within one year of the plan's date except as described in paragraphs (i)(7) and (i)(8) of this section. Owners are temporarily relieved of this obligation if the appliance has undergone system mothballing as defined in § 82.152.

(7) The owners or operators of industrial process refrigeration equipment will be allowed an additional year to complete the retrofit or retirement of industrial process refrigeration equipment if the conditions described in paragraph (i)(7)(i) or (i)(7)(ii) of this section are met, and will be allowed one year beyond the additional year if paragraph (i)(7)(iii) of this section is met.

(i) Additional time, to the extent reasonably necessary, will be allowed for retrofitting or retiring industrial process refrigeration equipment due to delays occasioned by the requirements of other applicable federal, state, or local regulations, or due to the unavailability of a suitable replacement refrigerant with a lower ozone-depletion potential. If these circumstances apply, the owner or operator of the facility must notify EPA within six months after the 30-day period following the discovery of an exceedance of the 35% leak rate. Records necessary to allow EPA to determine that these provisions apply and the length of time necessary to complete the work, in accordance with § 82.166(o), must be submitted to EPA, as well as maintained on-site. EPA will notify the owner or operator of its determination within 60 days of the submittal.

(ii) An additional one-year period beyond the initial one-year retrofit period is allowed for industrial process refrigeration equipment where the following criteria are met:

(A) The new or the retrofitted industrial process refrigerant system is custom-built;

(B) The supplier of the system or one or more of its crucial components has quoted a delivery time of more than 30 weeks from when the order is placed;

(C) The owner or operator notifies EPA within six months of the expiration of the 30-day period following the discovery of an exceedance of the 35% leak rate to identify the owner or operator, describe the system involved, explain why more than one year is needed, and demonstrate that the first two criteria are met in accordance with § 82.166(o); and

(D) The owner or operator maintains records adequate to allow a determination that the criteria are met.

(iii) The owners or operators of industrial process refrigerant equipment may request additional time to complete retrofitting or retiring industrial process refrigeration equipment beyond the additional one-year period if needed and where the initial additional one year was granted in accordance with paragraph (i)(7) (i) or (ii) of this section. The request shall be submitted to EPA before the end of the ninth month of the first additional year and shall include revisions of information required under § 82.166(o). Unless EPA objects to this request submitted in accordance with § 82.166(o) within 30 days of receipt, it shall be deemed approved.

(8) Owners or operators of federally-owned commercial or comfort-cooling refrigeration equipment will be allowed an additional year to complete the retrofit or retirement of industrial process refrigeration equipment if the conditions described in paragraph (i)(8)(i) of this section is met, and will be allowed one year beyond the additional year if paragraph (i)(8)(ii) of this section is met.

(i) An additional one-year period beyond the initial one-year retrofit period is allowed for such equipment where the following criteria are met:

(A) Due to complications presented by the federal procurement process, a delivery time of more than 30 weeks from the beginning of the official procurement process is quoted;

(B) The operator notifies EPA within six months of the expiration of the 30-day period following the discovery of an exceedance of the applicable allowable annual leak rate to identify the operator, describe the system involved, explain why more than one year is needed, and demonstrate that the first criterion is met in accordance with § 82.166(o); and

(C) The operator maintains records adequate to allow a determination that the criteria are met.

(ii) The owners or operators of federally-owned commercial or comfort-cooling refrigerant equipment may request additional time to complete retrofitting, replacement or retiring such refrigeration equipment beyond the additional one-year period if needed and where the initial additional one year was granted in accordance with paragraph (i)(8)(i) of this section. The request shall be submitted to EPA before the end of the ninth month of the first additional year and shall include revisions of information earlier submitted as required under § 82.166(o). Unless EPA objects to this request submitted in accordance with § 82.166(o) within 30 days of receipt, it shall be deemed approved.

(9) Owners or operators must repair leaks pursuant to paragraphs (i) (1), (2) and (5) of this section within 30 days of discovery, or within 30 days of when the leaks should have been discovered if the owners intentionally shielded themselves from information which would have revealed a leak, unless granted additional time pursuant to paragraph (i) of this section.

(10) The amount of time for owners and operators to complete repairs, retrofit plans or retrofits/replacements/retirements under paragraphs (i)(1), (i)(2), (i)(5), (i)(6), (i)(7), (i)(8), and (i)(9) of this section is temporarily suspended at the time a system is mothballed as defined in § 82.152. The time for owners and operators to complete repairs, retrofit plans, or retrofits/replacements under paragraph (i)(10) of this section will resume on the day the appliance is brought back on-line and is no longer considered mothballed.

(11) In calculating annual leak rates, purged refrigerant that is destroyed will not be counted toward the leak rate, in accordance with the definition of ''destruction'' set forth in 40 CFR 82.3(g). Owners or operators destroying purged refrigerants must maintain information as set forth in § 82.166(p)(1) and submit to EPA, within 60 days after the first time such exclusion is used by that facility, information set forth in § 82.166(p)(2).

4. § 82.166 is amended by adding paragraphs (n), (o), and (p) to read as follows:

§ 82.166 Reporting and recordkeeping requirements.

* * * * *

(n) The owners or operators of refrigeration equipment must maintain and report to EPA the following information where such reporting and recordkeeping is required and within the timelines specified under § 82.156 (i)(1), (i)(2), (i)(3) and (i)(5). This information must be relevant to the affected industrial process refrigeration equipment and must include:

(1) Identification of the facility;

(2) The leak rate;

(3) The method used to determine the leak rate and full charge;

(4) The date a leak rate of greater than the allowable annual leak rate was discovered;

(5) The location of leaks(s) to the extent determined to date;

(6) Any repair work that has been completed thus far and the date that work was completed;

(7) A plan to fix all other outstanding leaks to achieve a rate below the applicable allowable leak rate;

(8) The reasons why more than 30 days are needed to complete the work; and

(9) An estimate of when repair work will be completed. Where changes from original estimate of work when work will be completed occur, the reasons for these changes must be documented and submitted to EPA within 30 days of discovery of the need for such a change. The dates and types of static and dynamic tests performed and test results for all static and dynamic tests must be maintained and submitted to EPA within 30 days of conducting each test. All the information specified in paragraph (n) of this section must be maintained by the refrigeration facility on-site.

(o) The owners or operators of refrigeration equipment must maintain and report to EPA the following information where such reporting and recordkeeping is required and in the timelines specified in § 82.156(i)(7) and (i)(8), in accordance with § 82.156(i)(7) and (i)(8). This information must be relevant to the affected industrial process refrigeration equipment and must include:

(1) The identification of the industrial process facility;

(2) The leak rate;

(3) The method used to determine the leak rate and full charge;

(4) The date a leak rate of 35 percent or greater was discovered;

(5) The location of leaks(s) to the extent determined to date;

(6) Any repair work that has been completed thus far and the date that work was completed;

(7) A plan to complete the retrofit or replacement of the system;

(8) The reasons why more than one year is necessary to retrofit to replace the system;

(9) The date of notification to EPA;

(10) An estimate of when retrofit or replacement work will be completed;

(11) If time changes for original estimates occur, document reason for these changes; and

(12) The date of notification to EPA regarding a change in the estimate of when the work will be completed.

(13) The items in paragraphs (o) (11) and (12) of this section only are required to be submitted when such changes occur, and will be submitted within 30 days of occurring. All the information specified in paragraph (o) of this section must be maintained by the refrigeration facility on-site.

(p)(1) Owners or operators who wish to exclude purged refrigerants that are destroyed from annual leak rate calculations must maintain records on-site to support the amount of refrigerant claimed as sent for destruction. Records shall be based on a monitoring strategy that provides reliable data to demonstrate that the amount of refrigerant sent for destruction corresponds with the amount of refrigerant purged. Records shall include flow rate, quantity or concentration of the refrigerant in the vent stream, and periods of purge flow.

(2) Owners or operators who wish to exclude purged refrigerants that are destroyed from annual leak rate calculations must submit information to EPA, within 60 days after the first time the exclusion is utilized by a facility, that includes:

(i) The identification of the facility and a contact person, including the address and telephone number;

(ii) A general description of the refrigerant system, focusing on aspects of the system relevant to the purging of refrigerant and subsequent destruction;

(iii) A description of the methods used to determine the quantity of refrigerant sent for destruction and type of records that are being kept by the facility;

(iv) The frequency of monitoring and data-recording; and

(v) A description of the control device, and its destruction efficiency.

(vi) This information must also be included in any reporting requirements required for compliance with the leak repair and retrofit requirements for industrial process refrigeration equipment, as set forth in paragraphs (n) and (o) of this section.

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January 19, 1995

Part VI

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone; Labeling Supplemental Rulemaking; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–5132–8]

RIN 2060–AE51

Protection of Stratospheric Ozone; Labeling Supplemental Rulemaking

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document amends EPA's existing labeling regulations by adding an exemption from the labeling requirements regulations when controlled substances are destroyed, adding an exemption for spare parts that are used in repair, making revisions to clarify the labeling of waste, and making several other minor clarifying revisions. EPA is promulgating these revisions in response to numerous comments, in order to recognize and alleviate the burden placed on specific parties whose activities contribute no additional emissions of ozone-depleting substances. While these changes provide additional flexibility to the regulated community, they in no way compromise the environmental goals and benefits of protecting public health through the labeling regulation.

EFFECTIVE DATE: This final rule is effective February 21, 1995.

ADDRESSES: Comments on this final rule can be found in Public Docket No. A–91–60, Room M–1500 (LE–131), Waterside Mall, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The docket may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mavis Sanders, Regulatory Development and Operations Section, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation, 6205–J, 401 M Street, SW, Washington, DC 20460. 202/233–9737.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

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II. Destruction Exemption from the Labeling Requirements
A. Background on Destruction Policies
1. Background on Montreal Protocol's Destruction Policy
2. Fourth Meeting of the Parties to the Montreal Protocol
B. Phaseout Regulations
C. Proposed Accelerated Phaseout Destruction Provisions
D. Proposed Destruction Provision in the Final Labeling Rule
E. Requirements of RCRA and the Proposed Hazardous Organic NESHAP (HON)
1. Resource Conservation and Recovery Act (RCRA) Standards
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V. Clarification of the Meaning of Products ''Manufactured With''
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I. Introduction

In a final rule published on February 11, 1993 (58 FR 8136), EPA promulgated regulations to implement section 611 of the Clean Air Act. The regulations mandate that, effective May 15, 1993, labels are required on containers of class I and class II substances and products containing or manufactured with class I substances. The rule also calls for labels on all products containing or manufactured with class I or class II substances, beginning on January 1, 2015.

The final regulations exempt products manufactured using class I substances on an intermittent basis, and not as a direct part of the manufacturing process of the product, such as that employed in spot cleaning textiles during the manufacturing process. The rule explains that such intermittent contact use of controlled substances was found to be incidental ''contact.'' The final rule also explains that intermittent ''contact'' uses, though they may involve a brief initial physical contact between the ozone-depleting ''controlled substance'' and the product, occur infrequently, typically as part of an upkeep process, and that the controlled substance does not come into contact with every product. In other situations, where the controlled substance has contact on an intermittent basis only with the surface area of manufacturing equipment, and although there may be an initial contact with the first few products themselves, the controlled substance will not contact every product manufactured thereafter. Labeling is therefore not required in either of the above cases.

After the final regulations had been published, EPA received several comments from the regulated community requesting clarification of certain parts of the regulations or requesting certain revisions to the regulations. After review of these comments and concerns, EPA determined that certain revisions and clarifications would be appropriate. EPA therefore published a notice of proposed rulemaking (NPRM) on December 30, 1993 (58 FR 69568) proposing such revisions and making such clarifications.

The proposed amendments for the labeling regulations provide exemptions from labeling requirements for companies that destroy controlled substances used in their manufacturing processes to a 98 percent destruction efficiency, using any of the following five destruction technologies approved by the Parties to the Montreal Protocol: liquid injection incineration, reactor cracking, gaseous/fume oxidation, rotary kiln incineration and cement kilns. The proposal also proposes to provide exemptions for waste that is to be discarded; however, waste containers of controlled substances that are to be recycled or reclaimed would still require a label. Additionally, the NPRM proposed to exempt purchasers of spare parts manufactured with a controlled substance from the label pass-through requirement when such purchasers sell such spare parts for the sole purpose of repair and when such products are removed from their original packaging. Spare parts manufactured with a class I substance would require a label; however, once these parts are sold to a distributor who is to sell them to repair persons, such distributors would not be

required to pass through the label, so long as the parts are sold to persons using them for repair purposes only.

The NPRM also proposed other minor amendments that would clarify the definitions of ''manufactured with,'' ''import,'' and ''importer,'' exempt containers containing trace quantities of controlled substances, clarify the ''trace quantities'' exemption for products containing, revise the label placement requirements for containers of 55 gallons or smaller, and revise the certification requirement for the ''reduced use exemption.''

EPA recieved several comments from the public on the proposed rule, but no public hearing was requested. After review of the comments, EPA is today promulgating a final rule amending the labeling regulations.

II. Destruction Exemption from the Labeling Requirements

A. Background on Destruction Policies

1. Background on Montreal Protocol's Destruction Policy

The Montreal Protocol, to which over 132 nations are now Parties, requires that each Party nation control the production and consumption of substances that deplete the ozone layer. Under the existing Protocol, ''production'' of controlled substances is defined as ''the amount of controlled substances produced, minus the amount destroyed by technologies to be approved by the Parties.'' At the second meeting of the Parties to the Protocol (the Parties) in London, a technical advisory committee was established to examine the existing destruction technologies, devise criteria by which to approve technologies, and evaluate environmental concerns associated with the technologies. Until the Fourth Meeting of the Parties, no destruction technology had been approved by the Parties.

2. Fourth Meeting of the Parties to the Montreal Protocol

At the Fourth Meeting of the Parties to the Montreal Protocol, which took place from November 23–25, 1992, in Copenhagen, the Parties approved five destruction technologies to be used for destroying controlled substances. The technologies are: liquid injection incineration, reactor cracking, gaseous/fume oxidation, rotary kiln incinerators, and cement kilns. The Parties also agreed that additional acceleration of the phaseout of controlled substances would result in the need for a greater global destruction program for these substances. With the approval of the five technologies, the Parties noted that the technologies could attain a destruction efficiency of 99.99 percent with proper controls and operating techniques; however, they did not require a specific efficiency. The Parties encouraged a ''Code of Good Housekeeping Procedures,'' set forth in the United Nations Environmental Programme (UNEP) Report entitled Ad-Hoc Technical Advisory Committee on ODS Destruction Technologies, to minimize losses to the environment through control systems and standards for operating such systems. Finally, the Parties agreed to report the quantities of ozone-depleting substances destroyed annually to the Protocol.

With the approval of the five destruction technologies, Parties to the Protocol can subtract from the definition of production that amount of controlled substance(s) that is destroyed by these means, under certain conditions discussed in the final accelerated phaseout rule that was published on December 10, 1993 (58 FR 65018).

B. Accelerated Phaseout Destruction Provisions

The final accelerated phaseout regulations,which were published in the Federal Register on December 10, 1993, (58 FR 65018), implement the United States' acceleration of the phaseout of class I substances, consistent with the recent adjustments to the Protocol agreed upon last November by the Parties in Copenhagen; accelerate the phaseout of certain class II substances; list and phase out hydrobromofluorocarbons (HBFCs); list and phase out methyl bromide; and responded to petitions received by the Agency from environmental and industry groups.

In addition, in that rule, EPA revised the definition of ''production'' such that controlled substances that are to be destroyed are eliminated from the definition of production of such chemicals. The destruction of such substances must employ any one of the five technologies identified above that are approved by the Parties.

The rulemaking defines ''destruction'' in terms of technologies approved for destruction by the Parties that result in expiration of the chemical without any commercially useful end product being produced. The Agency proposed this definition in order to distinguish destruction from transformation, which requires that the resulting end product serve a commercial purpose. The regulation indicates that to be eligible for the destruction exemption, the controlled substances must be destroyed by one of the five destruction technologies approved by the Parties.

As explained more fully in the December 10, 1993 regulation, EPA believes that, while it is not required to follow the approach of the Protocol Parties regarding destruction, it has the authority to do so.

C. Proposed Destruction Provision in the Final Labeling Rule

The preamble to the final labeling regulations (58 FR 8136, February 11, 1993) requested comment on a destruction exemption from the labeling requirements based on the then proposed accelerated phaseout rule, which was being drafted at the time. The Agency requested comment on whether it could and should provide an exemption from the labeling requirements for the use of controlled substances that are subsequently destroyed using one of the above-mentioned approved technologies with procedures that are consistent with the Resource Conservation and Recovery Act (RCRA) and the United Nations Environmental Programme (UNEP) Report entitled Ad-Hoc Technical Advisory Committee on ODS Destruction Technologies. The Agency received and reviewed several comments on the possibility of a destruction exemption provision for the labeling rule. Those comments supported the inclusion of a destruction exemption, similar to that given for transformation. The commenters reasoned that the destruction exemption was justified because destruction of ozone-depleting substances prevents emissions of those substances into the atmosphere.

D. Related Requirements of RCRA and the Proposed Hazardous Organic NESHAP (HON)

In addition to the requirements of Title VI of the Clean Air Act as amended, certain controlled substances are also regulated, under certain circumstances, by the Resource Conservation and Recovery Act (RCRA, 42 USC 6901 et seq.) and are regulated under the final Hazardous Organic NESHAPS (the HON) (59 FR 19402, April 22, 1994). The RCRA regulations would cover those controlled substances that are considered to be hazardous constituents in the waste stream (e.g., carbon tetrachloride bound for incineration). The final HON addresses air emissions of hazardous air pollutants, a category into which carbon tetrachloride, methyl chloroform, and methyl bromide fall. The following discussion outlines the coordination among the RCRA and HON regulations and the destruction exemption provision of the labeling regulations.

1. Resource Conservation and Recovery Act (RCRA) Standards

The RCRA regulations currently require that industries that incinerate waste covered by the regulations must meet ''at stacks'' destruction efficiency (DE) standards of 99.99 percent. The final accelerated phaseout regulations grant full credit for the destruction of controlled substances when they are destroyed in compliance with RCRA regulations 40 CFR 266.104. The accelerated phaseout rule indicates that the Agency grants 100 percent production allowances for companies that achieve 99.99 percent efficiency in the destruction of class I substances instead of only 99.99 percent in allowances, because, otherwise, a company would never be able to obtain credit for the full amount of the chemical used, and would eventually be unable to obtain sufficient volumes to operate.

The only substances that are covered under both RCRA as ''hazardous constituents'' and under Title VI of the Clean Air Act as controlled substances are methyl chloroform (MCF) and carbon tetrachloride (CTC). The remaining controlled substances are regulated under RCRA only when they are blended with hazardous wastes, such as when used solvents are incinerated. The incineration technologies approved by the Parties have been shown to be capable of achieving the 99.99 percent DE required by RCRA; however, the Parties do not specifically require that each of the technologies achieve such an efficiency. The Parties supported the recommendations of the Ad-Hoc Technical Committee on Destruction Technologies to require Code of Good Housekeeping procedures to be applied throughout a destruction facility.

2. Hazardous Organic NESHAP (HON) Regulations

Under some situations controlled substances are not covered by RCRA regulations, but may be covered by the HON regulations promulgated under section 112 of the Clean Air Act. The Agency published a final HON rule on April 22, 1994 (59 FR 19402), requiring companies to control toxic air emissions from chemical manufacturing processes. The HON regulates approximately 400 manufacturing processes associated with the Synthetic Organic Chemical Manufacturing Industry (SOCMI), as well as 7 non-SOCMI source categories. Section 112 of the Clean Air Act contains a list of 189 hazardous air pollutants (HAPS) of which a large portion are known to be emitted by the above-mentioned industries. Of those listed under section 112, the only substances controlled under Title VI of the CAA are methyl chloroform (MCF), carbon tetrachloride (CCL4) and methyl bromide (newly listed as a class I substance in the accelerated phaseout rule). The HON covers five kinds of emission points within such facilities where these substances are emitted, including process vents, wastewater streams, transfer operations, storage tanks, and equipment leaks. The Agency requires that emission points be controlled with a ''reference control technology'' with specific applicability criteria, such as a 98 percent control efficiency for incinerators on process vents. The HON establishes performance standards for operating the control technologies, as well as criteria for the design of the control equipment. The Agency established that when organic HAPS are released through process vent sources, companies may route these emissions to a gaseous/fume oxidation incinerator for destruction. The Agency has determined that such incinerators may operate with a destruction efficiency of 98 percent.

The final accelerated phaseout regulation states that when regulations promulgated under section 112 of the Clean Air Act apply to the destruction of a controlled substance, and RCRA regulations do not apply, and the 98 percent destruction efficiency is achieved by incinerators to which emissions of controlled substances are routed, the Agency will grant the full allotment of allowances to replace chemicals that are destroyed under the conditions of the HON. In situations where section 112 regulations apply, but an achieved destruction efficiency is less than the 98% that the HON requires, the Agency will issue allowances only for the portion actually destroyed.

F. Amendments to the Final Labeling Regulations—Products Exempt from Labeling Requirements Where Manufacturers Use Protocol-approved Destruction Technologies

1. Notice of Propsed Rulemaking

The ultimate goal of Title VI of the CAA is to minimize depletion of stratospheric ozone. A destruction exemption, which would recognize, and provide an incentive for, the elimination of emissions of controlled substances through the use of approved destruction technologies, is therefore consistent with the goals of Title VI. This exemption is one method of reducing risks of ozone depletion. The initial labeling regulations published on February 11, 1993 provide an exemption from the labeling requirements if a controlled substance used to manufacture a product is transformed, such that the controlled substance no longer poses a threat to the ozone layer; similarly, the same result comes about if a controlled substance used in the manufacture of a product is destroyed. The controlled substance is not emitted in either case and no environmental harm occurs through exempting such products from labeling.

EPA proposed that for any products manufactured with a class I or class II substance, if that substance is destroyed according to any applicable legal or regulatory requirements, using one of the five technologies approved by the Parties to the Protocol, the product would be exempt from the labeling requirements.

The Agency further proposed that the labeling exemption would apply only where a substance is destroyed to a DE of 98 percent or greater, using one of the five approved destruction technologies. A definition of ''completely destroy,'' which means to destroy to 98 percent or greater destruction efficiency, using one of the five approved technologies, was included in the proposed rulemaking. Therefore, the proposed threshold at which labeling is exempted is for those products manufactured with controlled substances that are ''completely'' destroyed.

Furthermore, EPA proposed that where the destruction of a controlled substance is regulated under RCRA, the regulated party must achieve a destruction efficiency of 99.99 percent, destroying any controlled substances using one of the five approved technologies and complying with applicable RCRA regulations as they relate to destruction of ozone-depleting substances, in order to qualify for the exemption from labeling. If the destruction of a controlled substance is not regulated under RCRA but is regulated under the HON, the regulated party must achieve a destruction efficiency of 98 percent, as well as meet any other applicable standards imposed by the HON that relate to destruction of ozone-depleting substances, destroying any controlled substances using one of the five approved technologies, in order to qualify for the exemption from labeling.

The Agency is aware that state air quality permit laws may establish efficiency standards for emissions of controlled substances where no Federal regulations exist to cover them. In addition, state laws may be more stringent than comparable Federal regulations. In either case, the Agency

stated in the proposal that it expects companies that are regulated under such state laws governing the control of emissions of controlled substances in industrial processes to be in full compliance with such laws.

EPA also proposed that those companies that are not covered by either RCRA regulations or the HON must follow the Code of Good Housekeeping Practices, as described in the UNEP Ad-Hoc Technical Advisory Committee on ODS Destruction Technologies, as well as the whole of Chapter 5 of that report, in addition to meeting the 98 percent DE, using one of the five approved destruction technologies.

The UNEP Ad-Hoc Technical Advisory Committee on ODS Destruction Technologies recommends that atmospheric releases of controlled substances shall be monitored at all facilities with air emission discharges. For controlled substances, that report recommends that flow meters or continuously recording weighing equipment for individual containers should be used. At a minimum, containers should be weighed ''full'' and ''empty'' to establish quantities destroyed.

While there are no recordkeeping requirements specifically associated with the destruction exemption from labeling, the accelerated phaseout regulations (58 FR 65018) provide that companies relying on the destruction provisions of that rule must maintain records of destruction. For those companies, these same records will be consulted in inspecting eligibility for the destruction exemption from labeling. For manufacturers that do not receive production or consumption allowances, records required under other relevant regulations that determine the amount destroyed, the destruction efficiency, and the performance standards of operation must be made available to EPA upon request.

2. Response to Comments

The Agency requested comments on its proposal to exempt products from the labeling requirements where controlled substances used to manufacture the product are destroyed according to the criteria proposed by EPA. One commenter supported the use of destruction efficiencies that will be set in the HON, in instances where RCRA standards do not apply.

A commenter questioned the inclusion of the references to state regulations in this proposal because, according to the commenter, it makes EPA an enforcer of state laws and can potentially add federal penalties to state penalties assessed as a result of an inadvertent violation of a state law. EPA has removed the references to state regulations from the definition of ''completely destroy'' (§ 82.104(c)). It is not the Agency's intent to enforce state regulations, though EPA of course expects compliance with these laws.

Nine commenters agreed with the proposed destruction exemption requirements. However, several commenters requested an expanded definition of destruction technologies to include technologies not listed as one of the five acceptable destruction technologies outlined by the Montreal Protocol Parties. EPA disagrees with these requests. The intent of the destruction exemption under the labeling rule is to credit processes that emit trace quantities or no quantities of class I substances. As a Party to the Protocol, EPA believes that the U.S. should not expand the destruction exemption beyond the list of destruction technologies approved by the Parties. The five technologies approved by the Parties have been carefully reviewed and have been found to protect the environment from the harm caused by the release of control substances. EPA believes that no other technologies should be included until the Parties have reviewed such technologies and been assured of their safety. As the Parties review and approve additional technologies, EPA will explore expanding its list under these regulations. However, today's rulemaking will cover only those five destruction technologies approved by the Parties to the Protocol.

One commenter requested clarification that off-site destruction can qualify for this exemption. It is the Agency's intent to include off-site destruction as part of the destruction exemption. That same commenter requested that EPA make the UNEP Report available through the SPD hotline. Chapter 5 of the UNEP Report is currently available through the SPD hotline and can be found in Air Docket A–91–60.

3. Today's Rule

In light of the above discussion, EPA establishes in today's rule the destruction exemption as proposed in the December 30, 1993 Federal Register. Today's action specifies that those persons using a controlled substance in their manufacturing process, but then completely destroying that substance using one of the five approved destruction technologies, are exempt from labeling the product.

III. Labeling Requirements of Containers of Waste

A. Initial Requirements for Containers of Controlled Substance Waste and Wastes Containing Trace Amounts of Controlled Substances

EPA indicated in the final labeling regulations that a person handling containers of waste that contain class I or class II substances destined for incineration would benefit from the specific chemical information in the warning statement when handling. Though the label does not specifically address handling practices of such substances, it would inform technicians handling the containers of chemicals and would encourage them to dispose of them or recycle them correctly. In addition, containers of waste can be introduced into interstate commerce and must then be labeled as ''containing'' a controlled substance.

Under the initial final rule, EPA also required that containers of such waste materials destined to be recycled or reclaimed bear the warning statement to ensure that the technician of a reclamation facility is aware of the substances contained in order to exercise proper caution. Reclaimed substances are also resold by the reclaimer, and thus are required under the current rule to be labeled upon their introduction into interstate commerce.

The Agency did not require in its original final rule that empty containers that once contained a controlled substance and are subsequently recycled and incorporated into another product bear a label. The original rule also permitted the removal of a label on a container that no longer contains a controlled substance. If such a container is subsequently charged with a class I or class II substance, a label is be required. Also, the final rule excluded containers, such as trucks, railroad cars, or crates, used to transport a ''product containing'' or ''container containing'' from the labeling requirements, because only the immediate container holding the controlled substance must be labeled.

B. Proposed Labeling Requirements of Containers of Regulated Waste

After the promulgation of the original labeling regulations, EPA received new information from the regulated community regarding the labeling requirements for containers of waste. The Agency required labeling of waste in the original labeling rule because it believed that the labeling information would be important to waste handlers and recycling and reclamation facilities. In addition, by requiring waste to be

labeled, EPA attempted to encourage industry to minimize the amount of controlled substances in the waste stream and ultimately in the upper stratosphere. For this reason, the preamble to the original rule stated that all amounts, including trace quantities of controlled substances in waste, trigger the labeling requirements. The regulated community commented to EPA following publication of the final rule, addressing both the final rule and applicability determinations prepared by EPA on labeling of waste. Written comments on the Agency's treatment of waste and the relevant applicability determinations are available in the Air Docket A–91–60.

As a result of these comments, EPA proposed revisions to its original position on labeling waste containing controlled substances, in order to better facilitate industry's compliance with the regulations. The revisions that were proposed on December 30, 1993 are summarized below.

EPA stated in the notice of proposed rulemaking that containers of waste cannot be defined as products, ''because they are not manufactured from raw or recycled materials in order to perform a specific task, nor does waste encounter a point of sale to an ultimate consumer.'' The Agency also stated that a container (such as a dumpster or a barrel) carrying a ''product containing'' which is ultimately disposed of or incinerated, such as a can of adhesive or foam scrap, does not fall within the definition of ''container containing.'' Therefore, waste materials containing controlled substances are not required to be labeled under these regulations.

EPA also believes that containers of class I or class II waste do not fall under the definition of ''container containing,'' in that the waste is not ''intended to be transferred to another container, vessel or piece of equipment in order to realize its intended use.'' EPA's intention in including ''intended use'' in its definition was to target items to be consumed, thus giving consumers information on which to base a purchase decision. Waste is neither purchased nor ''used'' and thus, does not fall into the category of items to be consumed. In order to make this clear, EPA proposed a new § 82.106(b)(3) of the regulatory text, which includes ''waste containing controlled substances or blends of controlled substances bound for discard'' in the list of exemptions from warning label requirements. EPA also proposed a definition of ''waste,'' for purposes of this rule, that includes items or substances discarded with the intent that they will serve no further useful purpose. The term discarded can include being deposited in a landfill, being destroyed in an incinerator or chemical process, or undergoing some other type of final waste handling. Consequently, waste that is going to be discarded is not required to be labeled under this rulemaking.

Furthermore, the Agency stated that it believes that there is not a significant environmental benefit associated with labeling wastes of controlled substances. The labeling rule lays out requirements that will affect consumers' decisions, and thus, manufacturers' production decisions upstream. A label applied to the product(s) manufactured with or containing a controlled substance will provide such information to the consumer. Duplicating efforts by labeling the waste from a product that no longer serves its useful purpose has no influence on purchasing or consumer decisions, since waste is neither purchased nor used. Since waste is not a consumer item, a waste handler, whose business it is to handle all types of unwanted materials, would not be dissuaded from accepting a certain waste because of its effect on the ozone layer.

However, EPA stated that it believes that containers that contain used or contaminated controlled substances, such as some refrigerants, methyl chloroform, carbon tetrachloride, other CFCs and HCFCs, and blends of controlled substances that are bound for recycling or reclamation do fall under the definition of ''container containing.'' These substances will be transferred to realize their ''intended use'' and will later be used by consumers. Consequently, EPA proposed to continue requiring these containers to be labeled and did not propose such containers to be exempt from such requirements under this amendment. Such quantities are easily identifiable and are often recycled or reclaimed for manufacture or use in new products which would in turn require the mandated warning statement. Therefore, EPA stated that it believes that the mandated warning statement is warranted on containers of contaminated (or used) controlled substances and blends of controlled substances when they are introduced into interstate commerce for purposes of recycling or reclamation.

Because of the demand for and the high cost of controlled substances, EPA stated that it further believes that those using controlled substances will recycle or reclaim rather than discard them. Regulations promulgated pursuant to sections 608 and 609 of the Clean Air Act require recovery and recycling of refrigerants; efficient management of other uses of controlled substances would preclude discarding as a prudent option. In cases where these substances cannot be reused, recycled, or reclaimed, they are most often destroyed rather than deposited in a landfill or disposed in some other manner that would allow emissions of the substance. As hazardous wastes, carbon tetrachloride, methyl chloroform, and methyl bromide cannot be placed in a landfill, these chemicals most often are incinerated if not reused. Additionally, no non-containerized liquid wastes can be placed in landfills.

C. Response to Comments

One commenter requested clarification of the definition of discard. Another commenter requested that the definition of discard be included in the preamble. EPA has defined discarding to include depositing in a landfill, destroying in an incinerator or chemical process, or undergoing some other type of final waste handling that does not include re-use, recycling, or reclamation. The use of the term ''discard'' is meant to differentiate that which will no longer be used in any manner because of landfilling or incineration, from that which will undergo some type of change or treatment to make it appropriate for further use.

Two commenters requested an exemption for scrap foam and scrap disposal products destined for recycling, while another commenter sought clarification for products containing other controlled substances that are bound for recycling. EPA's intent in the proposed amendment was not to require labeling of scrap foam, either destined for discard or for recycling. Rather, the Agency states that the warning statement is required on containers of used controlled substances and blends of controlled substances that are introduced into interstate commerce for purposes of recycling or reclamation. Containers of actual controlled substances or blends of controlled substances (i.e. bulk containers of actual chemical substances) can be distinguished from products that themselves contain controlled substances. The latter do not require labeling when disposed in any fashion (including recycling or reclamation).

Two commenters stated that EPA should exempt waste products destined for destruction in a cement kiln or burned for energy recovery. In the final accelerated phaseout rule (58 FR 65018), EPA responded to comments by making clear that destruction of class I substances in one of the five approved

destruction technologies, which provides energy recovery as a by-product of the destruction process, would fall under the definition of destruction for purposes of the labeling exemption for waste. Energy recovery through the use of one of the five approved technologies does not disqualify a product manufactured with a class I substance that is destroyed by that technology from the labeling exemption. This remains consistent with the accelerated phaseout rule. A parallel situation exists when waste fuel is blended for purposes of providing auxiliary fuels for destruction facilities. When these fuels are intended to use one of the five approved destruction technologies for energy recovery, the waste fuels do not require labeling under today's rule. In either case, waste bound for energy recovery does not require labeling because it uses an incineration process and is ultimately destroyed.

Several commenters agreed with the proposed exemption for waste bound for discard; however, these commenters stated that the Agency should expand the definition of waste to be consistent with RCRA, which includes in its definition substances to be recycled. The purposes of the definition of waste under RCRA and under the labeling rule are very different. RCRA ensures that all hazardous waste materials, whether they are recycled, reclaimed, landfilled, incinerated, or otherwise disposed, are properly handled. The purpose of the labeling rule, however, is to provide purchasers with information upon which to make purchasing decisions. Therefore, since substances that are recycled continue to be passed through the stream of commerce to the ultimate consumer, who should know of its contents, bulk containers of these recycled substances require labeling.

One of these commenters added that reclamation/recovery facilities are not consumers, and therefore do not serve the intent of the labeling rule which is to provide consumers with information upon which to make purchasing decisions. As stated above, recycled waste continues to be subject to labeling requirements because it is part of the stream of commerce and reclaimers are not considered ultimate consumers.

Another of these commenters stated that waste generators may not know how waste will be disposed of, therefore it would be difficult properly label waste and that warning labels on wastes may discourage recycling. EPA believes that since waste generators make the decision of where products are to be sent, they therefore have both control and knowledge of waste disposal methods. Additionally, it is the intent of the labeling rule to encourage recycling efforts as waste handlers realize the benefits of additional availability and supply of recycled substances.

Another commenter requested further clarification on how an exemption applies to waste products bound for discard when they enter interstate commerce. The labeling rule draws distinctions based on materials that fall under the definition of ''container containing'' that are introduced into interstate commerce. Substances to be recycled and reclaimed that are introduced into interstate commerce fall under the definition of ''container containing'' under the labeling rule. As outlined in the original rule, substances are defined as ''container containing'' if they must be transferred to another container to realize their intended use by consumers. Because recycled and reclaimed substances must be transferred to other containers before continuing in the stream of commerce, labeling is required for such substances under today's rule. On the other hand, substances bound for discard (including destruction), are not ''containers containing'' under the labeling rule, because they are not ''intended to be transformed to another container in order to realize [their] intended use.''

D. Today's Rule

While it could be argued that requiring the labeling of waste provides valuable information about the contents of a waste to the handler, other regulations provide for similar information to be conveyed. For example, any waste considered to be hazardous (which includes carbon tetrachloride, methyl chloroform, and methyl bromide) must have its contents reported on the manifest required to accompany the waste under the Resource Conservation and Recovery Act (RCRA). Furthermore, EPA believes that the intent of the section 611 labeling provisions is to provide consumers with information upon which to make purchasing decisions, rather than to inform persons of contents for purposes of handling a substance, product or waste.

In summary, the Agency recognizes that waste should not be defined as a product under these regulations, nor should containers of waste be regarded as containers containing controlled substances, because they are not ''intended to be transferred to another container, vessel or piece of equipment in order to realize its intended use.'' Consequently, as proposed, EPA adds in today's rule a new 82.106(b)(3), which provides exemptions from the labeling requirements, to include, ''Waste containing controlled substances or blends of controlled substances bound for discard.'' EPA emphasizes, however, that containers of used or contaminated controlled substances or of blends of these controlled substances that enter into interstate commerce and that are bound for recycling or reclamation are not proposed to be exempted, and thus would continue to require labeling. The definition of ''waste'' for purposes of this rulemaking means, ''items or substances that are discarded with the intent that such items or substances will serve no further useful purpose.''

IV. Labeling Requirements for Spare Parts to be Used Solely for Repair

A. Proposal

The original labeling rule did not require a product which has already been purchased and used to be labeled if the product components were manufactured with a controlled substance or a controlled substance was used in the repair itself. EPA believes that such a product is not being introduced into interstate commerce since the product is already owned by the ultimate consumer. In a product labeling applicability determination, (Letter from John Rasnic, Director EPA Stationary Source Compliance Division, to Michael Conlon, dated April 19, 1993 and Section 611 Applicability Determination Record Number 6, dated April 20, 1993), following the promulgation of the final rule, EPA clarified that the repair provision of the rule allows the repair of a product using a component manufactured with an ODS or using an ODS in the repair of the product without triggering labeling requirements.

Subsequent to promulgation, the Agency has received new information from several companies regarding spare parts that are intended for repair purposes only. Many companies who distribute spare parts stock up to several million of these parts in inventory purchased from vendors. These companies then sell these spare parts piecemeal to persons who repair original products. Due to the pass-through exemption for persons incorporating a product manufactured with a controlled substance that was purchased from a supplier, and due to the applicability determination regarding repairs, the repair person would not be required to label the repaired product. To require companies that order spare parts in bulk from suppliers to pass through labeling information with each order—perhaps containing several hundred individual

spare parts from numerous bulk shipments—is exceedingly burdensome to those companies purchasing and selling the spare parts. Typically, the bulk shipment will be labeled on a shipping crate or an invoice to indicate that the parts within that shipment were manufactured with a controlled substance. The company ordering the spare parts breaks down the shipment into bins, currently necessitating a label or labeling information to be generated for each individual part contained in that shipment. In most cases, a repair person purchases hundreds of various individual spare parts at a time from the company, making the pass-through of any labeling information extremely cumbersome and time-consuming.

Many of the original manufacturers of these spare parts are foreign manufacturers, exacerbating the burden of tracking the use of controlled substances in the manufacture of each spare part in inventory. Developing and maintaining inventories of these spare parts is extremely costly, often many times more costly than the sale price of the spare parts themselves.

EPA's decision not to require manufacturers incorporating products manufactured with controlled substances to comply with the labeling pass-through requirement was based in part on the overwhelming tracking burden imposed in determining which components were actually made using a controlled substance. A similar situation exists for those purchasing spare parts for repair purposes. Many distributors stock hundreds of thousands of spare parts to be sold to repair persons. The burden of tracking each part that is to then be sold to a person using that part for repair—which is exempted from the labeling requirements—becomes overwhelming and is without environmental benefit.

Furthermore, the repair person has specific requirements for a spare part that will work with the existing product to be repaired; consumer discretion on his or her part based on the use of an ODS is unlikely. Because the repair person is not required to pass through any labeling information in the repair of the product, requiring the labeling of spare parts themselves serves no environmental benefit. Additionally, numerous companies that stock spare parts for the repair of their products have themselves totally stopped using controlled substances and are currently encouraging suppliers to use safe alternatives in manufacturing spare parts that they purchase.

In light of the information above, EPA proposed that purchasers of spare parts manufactured with a controlled substance and purchased from a vendor for the sole purpose of repair, or distributed for purposes of repair only, not be required to pass through the labeling information.

B. Response to Comments

EPA requested comments on its proposal to exempt from the label pass-through requirement those spare parts that are to be used for repair purposes. Nine commenters agreed with the proposed spare parts exemption.

One commenter suggested EPA exempt repair parts that contain a de minimis amount of class I chemicals. The final labeling regulation states that products containing a class I substance and containers containing a class I or class II substance bear warning labels. Because spare parts containing these substances clearly fall in the category of ''products containing,'' they are required to be labeled. However, products containing trace quantities of a class I substance as an impurity or a residue, where the controlled substance serves no useful purpose in the product, are exempted from the labeling requirements.

Two commenters stated that the labeling exemption for spare parts should apply to manufacturers as well as others involved in the distribution process because tracking and labeling requirements for these spare parts is exceedingly burdensome and time consuming. EPA disagrees with the statement that labeling of these products by the original manufacturer represents an undue burden. Tracking and labeling spare parts made with a controlled substance by the original manufacturer is comparable to that of any other manufacturer of products which require labeling. Therefore, pass-through exemptions from labeling, which does not include manufacturers, will remain as proposed.

One of these commenters added that there are instances where ''currently or potentially available'' alternatives have not been identified for specific applications. In this case, according to the commenter, labeling requirements for spare parts where alternatives have not been identified would penalize that industry. The original final regulations provide for exemptions from labeling requirements for products manufactured using a class I substance where there are no substitute products or processes that 1) do not rely on the use of class I substances, 2) reduce the overall risk to human health and the environment, and 3) are currently or potentially available. Manufacturers whose products meet this criteria can apply to EPA for an exemption from labeling requirements as outlined in the original final in the section marked Petitions (§ 82.120).

Another commenter requested clarification that the exemption applies to wholly-owned subsidiaries of the manufacturers of spare parts and that individual packages that arrive under one airway bill with alternative labeling are not subject to labeling upon entry into the country. The original rule states that wholly-owned subsidiaries are part of a parent company and are subjected to the labeling regulations; therefore, the spare parts exemption also applies to these wholly-owned subsidiaries. Additionally, if a consolidated shipment is properly labeled using an alternative label, then individual packages within that shipment do not require labeling. For spare parts that fall under the exemption established in today's rulemaking, importers and distributors are only required to pass through the label when moving the labeled shipments as packaged by the manufacturer.

C. Today's Rule

In summary, EPA establishes in today's rule that purchasers of spare parts manufactured with a controlled substance and purchased from a vendor for the sole purpose of repair, or distributed for purposes of repair only, not be required to pass through the labeling information. EPA wishes to emphasize that this exemption to the pass-through requirement does not apply to products containing a controlled substance or containers of controlled substances, nor does it apply to spare parts used to manufacture products. Manufacturers of spare parts made with controlled substances are still required to apply the appropriate labels. Moreover, importers and distributors moving the labeled shipments as packaged by the manufacturer must still pass through the labeling information.

V. Clarification of the Meaning of Products ''Manufactured With''

The original final rule discussed the applicability of the labeling requirements for products *manufactured with* controlled substances. Some confusion over when labeling is required for such products has emerged since the publication of that final rule. The following discussion should clarify such labeling questions.

In reviewing whether a product must be labeled, one must examine from two perspectives. Is labeling required because it is a product ''containing'' a controlled substance? If not, is labeling then required because it is a product

''manufactured with'' a controlled substance?

The final rule states that a controlled substance that is inadvertently produced or remains as a residue from a chemical reaction, leaving trace quantities of that substance in the final product, does not trigger the labeling requirements. However, there may be cases where a product is exempt from being labeled a product ''containing'' (in this case because it is only present in trace quantities), but where a product may still require labeling because it is considered to be ''manufactured with'' that controlled substance.

The introduction of carbon tetrachloride as an explosion suppressant in the manufacture of certain chemicals serves as an example. The carbon tetrachloride is introduced, then withdrawn from the chemical product. Trace quantities of the carbon tetrachloride remain in the chemical; however, such quantities serve no useful purpose in the final product. As a result, the product is exempt from being labeled as a product containing carbon tetrachloride. However, because the carbon tetrachloride is introduced into the chemical product directly in the manufacturing process, actually having physical contact with the product, the product would need to be labeled as ''manufactured with'' carbon tetrachloride, unless other exemptions apply.

In order to be consistent with this view, EPA proposed to revise the definition of ''manufactured with.'' The original regulations stated that a product is manufactured with a controlled substance if the manufacturer used a controlled substance directly in the product's manufacture, ''but the product itself does not contain a controlled substance at the point of introduction into interstate commerce.'' However, to further clarify that trace quantities may actually be contained in a product manufactured with a controlled substance, EPA proposed to revise the definition of ''manufactured with,'' to state that a product ''does not contain more than trace quantities of the controlled substance.* * *''

Six commenters agreed with these proposed changes. One commenter disagreed with EPA's position that carbon tetrachloride should trigger labeling unless the substance is subsequently destroyed or transformed, because the carbon tetrachloride is withdrawn from the product and only trace quantities remain. EPA supports it's original position, based on the fact that the introduction of carbon tetrachloride, which is used on a routine basis, constitutes use as part of the direct manufacturing process. As a result, today's rule establishes the modified definition of ''manufactured with'' as proposed.

VI. Exemption for Trace Quantities

The preamble to the original labeling rule discussed the applicability of the labeling requirements for products *containing trace quantities* of controlled substances. However, some confusion over when labeling is required for such products has arisen since the publication of that rule.

The regulatory text in section 82.106, referring to the warning statement requirements, lists certain exemptions from these requirements. The first of these addresses ''Products in which trace quantities of a controlled substance remain as a residue or impurity.* * *'' EPA has determined that a trace quantity *remaining* in a product can only be *contained within* a chemical product; therefore, it is logical that this exemption specifically applies to products ''containing'' rather than products ''manufactured with.'' Products that are manufactured using a controlled substance, but that contain only trace quantities of the substance, are not required to be labeled as a ''product containing''; however, they are required to be labeled as a ''product manufactured with.'' To clarify this point, EPA proposed to amend section 82.106(b)(1), which provides exemptions from the labeling requirements, to read: ''Products *containing* trace quantities of a controlled substance remaining as a residue or impurity due to a chemical reaction, and where the controlled substance serves no useful purpose in or for the product itself.'' However, if such a product was manufactured using the controlled substance, such product is required to be labeled as a ''product manufactured with'' the controlled substance.

There was also some confusion as to whether a container containing a trace amount of a controlled substance must be labeled. EPA understands that to determine whether a container contains a trace amount of a controlled substance, where such a determination falls outside of normal procedures, may be difficult and costly. For example, a container of a non-controlled substance that may hold a trace amount of a controlled substance as an impurity of the manufacturing process would be subject to labeling under current labeling requirements. As a product, however, that same container would be exempt from the labeling requirements. In many cases, expensive testing must be conducted to determine if a trace quantity of the controlled substance is in fact contained in the container. Requiring the labeling of containers containing trace quantities of a controlled substance is inconsistent with the trace quantities exemption of the current labeling rule and with the intent of the Agency to require labeling of ''containers of'' controlled substances.

EPA received three comments agreeing with the exemption for trace quantities. One commenter asked for clarification of the definition of trace quantity. Another commented that trace quantities should be defined with a quantifying limit above which labeling would be required. Another commenter recommended that EPA publish guidance on what constitutes a ''trace quantity'', and suggests using analytical detection limits for the exemption level. Because the labeling rule covers a multitude of substances, products, and volumes, EPA believes it cannot responsibly put forth a standardized threshold for ''trace quantity.'' However, EPA believes that the term ''trace amounts'' should be interpreted consistently with *Webster's Ninth New Collegiate Dictionary* (copyright 1990), which defines trace amounts to mean ''a chemical element present in minute quantities.'' Reasonable interpretations of what constitutes a trace amount will likely be parallel to reasonable interpretations made by EPA. EPA is today revising its regulations, as proposed, to make the exemption clear. EPA will add the new 82.106(b)(2), (discussed above), stating that containers containing trace quantities of a controlled substance, which remain as a residue or impurity, are exempt from the labeling requirements.

VII. Labeling Requirements of Containers of 55 Gallons and Smaller Containing Controlled Substances

The original labeling regulations indicated that the use of supplemental printed material may be used to label containers of controlled substances that are larger than 55 gallon drums, as long as the information is viewed at the time of purchase or time of delivery, provided the purchase is not considered complete until delivery is accepted. EPA reasoned that such information, rather than the containers themselves, is usually viewed by the recipient of such containers. The regulations also indicated that the warning statement must be placed directly on containers of controlled substances that are smaller than 55 gallon drums.

EPA proposed in the December 30, 1993 amendment that supplemental printed material may also be used to

convey the warning statement for containers that are 55 gallons and smaller. EPA requested comment on its proposal to allow alternative placement of warning statements on 55 gallon or smaller containers. Seven commenters agreed with this proposed change with no requests for additional information or clarification. Consequently, EPA is revising section 82.108 (c) of its labeling regulation to strike ''larger than a 55 gallon drum'' from the provision allowing alternative placement of the warning statement on containers of controlled substances.

VIII. Definition of Importer

For purposes of section 611, EPA clarifies that importers of ''products manufactured with controlled substances'' are included in the definition of ''importer.'' While the intent of the § 611 regulations was to cover imports of products manufactured with class I substances, the original definition did not explicitly include such a phrase. This came about as an oversight in transferring the definition from the phaseout regulations, where imports of containers and products containing controlled substances are regulated. Section 611 clearly mandates that ''products manufactured with controlled substances'' be labeled before they are introduced into interstate commerce. Therefore, for purposes of the labeling requirements and consistency with the statute, the definition of ''importer'' under section 611 is amended to include the phrase ''products manufactured with.''

One commenter stated that the requirement to apply labels for imported products at the border is highly impractical, burdensome, time consuming and costly. While this issue, however, was not addressed in the proposed labeling amendments, EPA wishes to clarify that importers are responsible for ensuring that labels are properly affixed, but the labeling regulations do not require that the label can only be affixed at the border. The requirements may equally be met by ensuring that the label is affixed before the product reaches the border. The importer may negotiate with its supplier to ensure that labels are affixed prior to shipment. No other comments were received; the change in the definition of ''importer'' is established in today's rule, as proposed.

IX. Certification Requirements for Reduced Use Exemption

In section 82.122, EPA states that companies that reduced their use of CFC–113 and/or methyl chloroform (MCF) by 95 percent or greater over their 1990 usage level could certify the reduction in writing to EPA and be exempt from the labeling requirements. In addition to other requirements for inclusion in the written certification, the regulations require that persons certifying to EPA must state that they will not exceed 5 percent of their 1990 use following the certification; however, the statement conveyed was numerically and grammatically incorrect. It reads: ''Persons certifying must also include a statement that indicates that their future annual use will not at no time exceed 95 percent of their 1990 usage'' (p. 8169).

EPA corrects this section of the regulations to state that a company must certify to EPA that its future use will not exceed 5 percent of its 1990 usage without notifying the Agency. Such notification would immediately result in labeling of the company's products. This subpart (§ 82.122 (a)(4)) would thus read: ''Persons certifying must also include a statement that indicates their future annual use will at no time exceed 5 percent of their 1990 usage.''

X. Imports and Products Introduced In Bond at the U.S./Mexico Border

The original labeling regulations state that products or containers introduced ''in bond'' at the Mexico border are not considered to be ''imports.'' However, the preamble states that such products or containers are being introduced into U.S. interstate commerce and are therefore subject to the labeling requirements.

EPA proposed in its December 30, 1993 amendment that all products and containers subject to the labeling requirements that are made or charged in Mexico and subsequently brought into the U.S. must be labeled at the border where they are being introduced into U.S. interstate commerce. In order to facilitate enforcement of this rule, the Agency only requires that warning labels be placed on regulated products and containers at the border by persons introducing them into U.S. interstate commerce, rather than at the manufacturing facility in Mexico. However, the importer may contract with the Mexican manufacturer to provide the applicable warning statement prior to shipping.

This change supersedes EPA's reference to products or containers admitted in bond in the original labeling rule, since for purposes of the labeling requirements, the regulated products and containers are in fact being treated as ''imports.'' This change makes the definition of import somewhat different from that in the final phaseout regulations. For purposes of the phaseout regulations, it is appropriate to exempt such products of U.S. origin that are brought back into the U.S. from Mexico in bond from the definition of import because allowances have already been expended and additional consumption allowances should not be required to bring these products back into the U.S.

However, it is appropriate and consistent with the intent of § 611 to require labeling of these imported goods, since labeling is to occur regardless of whether the product is distributed domestically or imported. The Agency therefore is striking from the definition of ''import'' in section 82.104 (j) of the labeling regulation the exemption for bringing controlled substances, containers of, or products manufactured with, controlled substances into the U.S. from Mexico where such substance, container or product was admitted into Mexico in bond and is of U.S. origin. EPA requested and received no comments on the changes and consequently they remain in today's final regulation.

In addition, EPA notes that the preamble to the original labeling rule contained an inaccuracy in describing an arrangement regarding products brought from Mexico into the United States inbond. The preamble stated that, ''Under the Maquiladora Agreement, the United States and Mexico established a free-trade zone along a segment of the U.S./Mexico border.'' There is no formal agreement as such between the two countries in this regard; rather, an arrangement exists, primarily under Mexican law, whereby controlled substances crossing the border from the U.S. into Mexico ''inbond'' (under a bond ensuring that the substance will remain in Mexico only temporarily) will be returned to the U.S., without being subject to Mexican import tariffs. In addition, the preamble to the original rule stated that ''products are permitted to be transported across [the Maquiladora] zone without any U.S. Customs restrictions being imposed.'' This statement is misleading in that U.S. Customs does assist EPA in monitoring compliance with and enforcing U.S. environmental laws that generally apply without distinction to Maquiladora products. The preamble to the final rule should therefore be read to reflect these corrections. EPA requested comments on these corrections and received none. Consequently, the changes remain as proposed.

XI. Incidental Uses of Controlled Substances

In the original final regulations, the definition of ''manufactured with''

excluded the use of a controlled substance ''Where the manufacturing equipment has had physical contact with a controlled substance in an intermittent manner, not as a routine part of the direct manufacturing process * * *'' (See p. 8165). The preamble gave as an example the occasional cleaning of an ink plate, where direct contact occurs only between the controlled substance and the manufacturing equipment, not between the controlled substance and the product itself (other than the first one or two products going through the equipment following equipment maintenance). However, the preamble, in addressing this point, specifically noted that this exclusion should also apply in the case of a controlled substance having intermittent contact with the product itself, such as a textile where direct contact occurs through spot cleaning of some individual textiles, but where direct contact is not a normal or usual occurrence in the manufacture of the product.

The Agency intended for the regulatory text to reflect the full discussion in the preamble to the final rule. Therefore, EPA proposed to exempt from the labeling requirements products where there are intermittent uses of controlled substances that may involve an initial contact with the product itself, as well as with the equipment. The exception was proposed to read: ''[W]here the manufacturing equipment *or product* has had physical contact with a controlled substance in an intermittent manner, not as a routine part of the direct manufacturing process * * *'' EPA received no comments on this issue. EPA therefore will revise the regulatory text as proposed.

XII. Request for Comments Regarding Plasma Etching

In the preamble of the original labeling rule, EPA states that ''plasma etching'' is considered a process that entails transformation, and thus products manufactured using plasma etching need not be labeled, unless they are otherwise subject to the regulations.'' Since publication of the final rule, EPA has heard from one plasma etcher who has discovered that the plasma etching process may not necessarily transform all but trace quantities of controlled substances used in the process. At times, it is estimated that as much as 40 percent may not be transformed.

EPA has not received any additional comments on whether plasma etching can be considered generally to constitute transformation under the final labeling rule, which defines transformation as, ''to use and entirely consume a class I or class II substance, except for trace quantities, by changing it into one or more substances not subject to this subpart in the manufacturing process of a product or chemical.'' Consequently, without further data illustrating that plasma etching does or does not transform all but trace quantities, EPA cannot make any general statements about plasma etching; however, if a particular plasma etching process meets the requirements for ''transformation'', then the manufacturer need not label the product.

XIII. Miscellaneous

One commenter requested clarification on the requirements in the original rule (February 11, 1994), to list multiple class I or class II substances on a warning label (§ 82.110), and whether the word ''may'' implies that it is not mandatory to list all applicable substances. In situations where products are manufactured with or contain multiple substances, those substances must be represented on the warning label. These substances can be identified by either 1) listing them directly on the label, or 2) by using an asterisk (*) in place of the substance name with a corresponding list of those substances in a legible and conspicuous location. The word ''may'' is intended to imply the option to use of either of the above labeling alternatives, not to imply that labeling is not mandatory in cases where multiple class I or class II substances are used.

XIV. Summary of Supporting Analysis

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that this amendment to the final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

EPA believes that any impact that this amendment will have on the regulated community will serve only to provide relief from otherwise applicable regulations, and will therefore limit the negative economic impact associated with the regulations previously promulgated under Section 608. An examination of the impacts on small entities was discussed in the final rule (58 FR 28660). That final rule assessed the impact the rule may have on small entities. A separate regulatory impact analysis accompanied the final rule and is contained in Docket A–92–01. I certify that this amendment to the labeling rule will not have any additional negative economic impacts on any small entities.

C. Paperwork Reduction Act

Any information collection requirements in a rule must be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Because no additional informational collection requirements are required by this amendment, EPA has determined that the Paperwork Reduction Act does not apply to this rulemaking and no new Information Collection Request document has been prepared.

XV. Judicial Review

Under Section 307(b)(1) of the Act, EPA finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit

within sixty days of publication of this action in the Federal Register. Under Section 307(b)(2), the requirements of this rule may not be challenged later in judicial proceedings brought to enforce those requirements.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Interstate commerce, Nonessential products, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: December 23, 1994.

Carol M. Browner,

Administrator.

Part 82, title 40, Code of Federal Regulations is amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671(q).

2. Subpart E, consisting of §§ 82.100 through 82.124, is revised to read as follows:

Subpart E—The Labeling of Products Using Ozone-Depleting Substances

Sec.

82.100 Purpose.
82.102 Applicability.
82.104 Definitions.
82.106 Warning statement requirements.
82.108 Placement of warning statement.
82.110 Form of label bearing warning statement.
82.112 Removal of label bearing warning statement.
82.114 Compliance by manufacturers and importers with requirements for labeling of containers of controlled substances, or products containing controlled substances.
82.116 Compliance by manufacturers or importers incorporating products manufactured with controlled substances.
82.118 Compliance by wholesalers, distributors and retailers.
82.120 Petitions.
82.122 Certification, recordkeeping, and notice requirements.
82.124 Prohibitions.

Subpart E—The Labeling of Products Using Ozone-Depleting Substances

§ 82.100 Purpose.

The purpose of this subpart is to require warning statements on containers of, and products containing or manufactured with, certain ozone-depleting substances, pursuant to section 611 of the Clean Air Act, as amended.

§ 82.102 Applicability.

(a) In the case of substances designated as class I or class II substances as of February 11, 1993, the applicable date of the requirements in this paragraph (a) is May 15, 1993. In the case of any substance designated as a class I or class II substance after February 11, 1993, the applicable date of the requirements in this paragraph (a) is one year after the designation of such substance as a class I or class II substance unless otherwise specified in the designation. On the applicable date indicated in this paragraph (a), the requirements of this subpart shall apply to the following containers and products except as exempted under paragraph (c) of this section:

(1) All containers in which a class I or class II substance is stored or transported.

(2) All products containing a class I substance.

(3) All products directly manufactured with a process that uses a class I substance, unless otherwise exempted by this subpart or, unless the Administrator determines for a particular product that there are no substitute products or manufacturing processes for such product that do not rely on the use of a class I substance, that reduce overall risk to human health and the environment, and that are currently or potentially available. If the Administrator makes such a determination for a particular product, then the requirements of this subpart are effective for such product no later than January 1, 2015.

(b) Applicable January 1, 2015 in any case, or one year after any determination between May 15, 1993 and January 1, 2015, by the Administrator for a particular product that there are substitute products or manufacturing processes for such product that do not rely on the use of a class I or class II substance, that reduce the overall risk to human health and the environment, and that are currently or potentially available, the requirements of this subpart shall apply to the following:

(1) All products containing a class II substance.

(2) All products manufactured with a process that uses a class II substance.

(c) The requirements of this subpart shall not apply to products manufactured prior to May 15, 1993, provided that the manufacturer submits documentation to EPA upon request showing that the product was manufactured prior to that date.

§ 82.104 Definitions.

(a) *Class I substance* means any substance designated as class I in 40 CFR part 82, appendix A to subpart A, including chlorofluorocarbons, halons, carbon tetrachloride and methyl chloroform and any other substance so designated by the Agency at a later date.

(b) *Class II substance* means any substance designated as class II in 40 CFR part 82, appendix A to subpart A, including hydrochlorofluorocarbons and any other substance so designated by the Agency at a later date.

(c) *Completely destroy* means to cause the destruction of a controlled substance by one of the five destruction processes approved by the Parties at a demonstrable destruction efficiency of 98 percent or more or a greater destruction efficiency if required under other applicable federal regulations.

(d) *Consumer* means a commercial or non-commercial purchaser of a product or container that has been introduced into interstate commerce.

(e) *Container* means the immediate vessel in which a controlled substance is stored or transported.

(f) *Container containing* means a container that physically holds a controlled substance within its structure that is intended to be transferred to another container, vessel or piece of equipment in order to realize its intended use.

(g) *Controlled substance* means a class I or class II ozone-depleting substance.

(h) *Destruction means* the expiration of a controlled substance, that does not result in a commercially useful end product using one of the following controlled processes in a manner that complies at a minimum with the ''Code of Good Housekeeping'' of Chapter 5.5 of the United National Environment Programme (UNEP) report entitled, *Ad-Hoc Technical Advisory Committee on ODS Destruction Technologies*, as well as the whole of Chapter 5 from that report, or with more stringent requirements as applicable. The report is available from the Environmental Protection Agency, Public Docket A–91–60, 401 M Street, SW., Washington, DC 20460 The controlled processes are:

(1) Liquid injection incineration;

(2) Reactor cracking;

(3) Gaseous/fume oxidation;

(4) Rotary kiln incineration; or

(5) Cement kiln.

(i) *Distributor* means a person to whom a product is delivered or sold for purposes of subsequent resale, delivery or export.

(j) *Export* means the transport of virgin, used, or recycled class I or class II substances or products manufactured or containing class I or class II

substances from inside the United States or its territories to persons outside the United States or its territories, excluding United States military bases and ships for on-board use.

(k) *Exporter* means the person who contracts to sell class I or class II substances or products manufactured with or containing class I or class II substances for export or transfers such substances or products to his affiliate in another country.

(l) *Import* means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into any place subject to the jurisdiction of the United States whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States, with the exception of temporary off-loading of products manufactured with or containers containing class I or class II substances from a ship are used for servicing of that ship.

(m) *Importer* means any person who imports a controlled substance, a product containing a controlled substance, a product manufactured with a controlled substance, or any other chemical substance (including a chemical substance shipped as part of a mixture or article), into the United States. ''Importer'' includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf. The term also includes, as appropriate:

(1) The consignee;

(2) The importer of record listed on U.S. Customs Service forms for the import;

(3) The actual owner if an actual owner's declaration and superseding bond has been filed; or

(4) The transferee, if the right to draw merchandise in a bonded warehouse has been transferred.

(n) *Interstate commerce* means the distribution or transportation of any product between one state, territory, possession or the District of Columbia, and another state, territory, possession or the District of Columbia, or the sale, use or manufacture of any product in more than one state, territory, possession or District of Columbia. The entry points for which a product is introduced into interstate commerce are the release of a product from the facility in which the product was manufactured, the entry into a warehouse from which the domestic manufacturer releases the product for sale or distribution, and at the site of United States Customs clearance.

(o) *Manufactured with a controlled substance* means that the manufacturer of the product itself used a controlled substance directly in the product's manufacturing, but the product itself does not contain more than trace quantities of the controlled substance at the point of introduction into interstate commerce. The following situations are excluded from the meaning of the phrase ''manufactured with'' a controlled substance:

(1) Where a product has not had physical contact with the controlled substance;

(2) Where the manufacturing equipment or the product has had physical contact with a controlled substance in an intermittent manner, not as a routine part of the direct manufacturing process;

(3) Where the controlled substance has been transformed, except for trace quantities; or

(4) Where the controlled substance has been completely destroyed.

(p) *Potentially available* means that adequate information exists to make a determination that the substitute is technologically feasible, environmentally acceptable and economically viable.

(q) *Principal display panel (PDP)* means the entire portion of the surface of a product, container or its outer packaging that is most likely to be displayed, shown, presented, or examined under customary conditions of retail sale. The area of the PDP is not limited to the portion of the surface covered with existing labeling; rather it includes the entire surface, excluding flanges, shoulders, handles, or necks.

(r) *Product* means an item or category of items manufactured from raw or recycled materials, or other products, which is used to perform a function or task.

(s) *Product containing* means a product including, but not limited to, containers, vessels, or pieces of equipment, that physically holds a controlled substance at the point of sale to the ultimate consumer which remains within the product.

(t) *Promotional printed material* means any informational or advertising material (including, but not limited to, written advertisements, brochures, circulars, desk references and fact sheets) that is prepared by the manufacturer for display or promotion concerning a product or container, and that does not accompany the product to the consumer.

(u) *Retailer* means a person to whom a product is delivered or sold, if such delivery or sale is for purposes of sale or distribution in commerce to consumers who buy such product for purposes other than resale.

(v) *Spare parts* means those parts that are supplied by a manufacturer to another manufacturer, distributor, or retailer, for purposes of replacing similar parts with such parts in the repair of a product.

(w) *Supplemental printed material* means any informational material (including, but not limited to, package inserts, fact sheets, invoices, material safety data sheets, procurement and specification sheets, or other material) which accompanies a product or container to the consumer at the time of purchase.

(x) *Transform* means to use and entirely consume a class I or class II substance, except for trace quantities, by changing it into one or more substances not subject to this subpart in the manufacturing process of a product or chemical.

(y) *Type size* means the actual height of the printed image of each capital letter as it appears on a label.

(z) *Ultimate consumer* means the first commercial or non-commercial purchaser of a container or product that is not intended for re-introduction into interstate commerce as a final product or as part of another product.

(aa) *Warning label* means the warning statement required by section 611 of the Act. The term warning statement shall be synonymous with warning label for purposes of this subpart.

(bb) *Waste* means, for purposes of this subpart, items or substances that are discarded with the intent that such items or substances will serve no further useful purpose.

(cc) *Wholesaler* means a person to whom a product is delivered or sold, if such delivery or sale is for purposes of sale or distribution to retailers who buy such product for purposes of resale.

§ 82.106 Warning statement requirements.

(a) *Required warning statements.* Unless otherwise exempted by this subpart, each container or product identified in § 82.102 (a) or (b) shall bear the following warning statement, meeting the requirements of this subpart for placement and form:

WARNING: Contains [or Manufactured with, if applicable] [*insert name of substance*], a substance which harms public health and environment by destroying ozone in the upper atmosphere.

(b) *Exemptions from warning label requirement.* The following products need not bear a warning label:

(1) Products containing trace quantities of a controlled substance remaining as a residue or impurity due to a chemical reaction, and where the

controlled substance serves no useful purpose in or for the product itself. However, if such product was manufactured using the controlled substance, the product is required to be labeled as a ''product manufactured with'' the controlled substance, unless otherwise exempted;

(2) Containers containing a controlled substance in which trace quantities of that controlled substance remain as a residue or impurity;

(3) Waste containing controlled substances or blends of controlled substances bound for discard;

(4) Products manufactured using methyl chloroform or CFC–113 by persons who can demonstrate and certify a 95% reduction in overall usage from their 1990 calendar year usage of methyl chloroform or CFC–113 as solvents during a twelve (12) month period ending within sixty (60) days of such certification or during the most recently completed calendar year. In calculating such reduction, persons may subtract from quantities used those quantities for which they possess accessible data that establishes the amount of methyl chloroform or CFC–113 transformed. Such subtraction must be performed for both the applicable twelve month period and the 1990 calendar year. If at any time future usage exceeds the 95% reduction, all products manufactured with methyl chloroform or CFC–113 as solvents by that person must be labeled immediately. No person may qualify for this exemption after May 15, 1994;

(5) Products intended only for export outside of the United States shall not be considered ''products introduced into interstate commerce'' provided such products are clearly designated as intended for export only;

(6) Products that are otherwise not subject to the requirements of this subpart that are being repaired, using a process that uses a controlled substance.

(7) Products, processes, or substitute chemicals undergoing research and development, by which a controlled substance is used. Such products must be labeled when they are introduced into interstate commerce.

(c) *Interference with other required labeling information.* The warning statement shall not interfere with, detract from, or mar any labeling information required on the labeling by federal or state law.

§ 82.108 Placement of warning statement.

The warning statement shall be placed so as to satisfy the requirement of the Act that the warning statement be ''clearly legible and conspicuous.'' The warning statement is clearly legible and conspicuous if it appears with such prominence and conspicuousness as to render it likely to be read and understood by consumers under normal conditions of purchase. Such placement includes, but is not limited to, the following:

(a) *Display panel placement.* For any affected product or container that has a display panel that is normally viewed by the purchaser at the time of the purchase, the warning statement described in § 82.106 may appear on any such display panel of the affected product or container such that it is ''clearly legible and conspicuous'' at the time of the purchase. If the warning statement appears on the principal display panel or outer packaging of any such affected product or container, the warning statement shall qualify as ''clearly legible and conspicuous,'' as long as the label also fulfills all other requirements of this subpart and is not obscured by any outer packaging, as required by paragraph (b) of this section. The warning statement need not appear on such display panel if either:

(1) The warning statement appears on the outer packaging of the product or container, consistent with paragraph (b) of this section, and is clearly legible and conspicuous; or

(2) The warning statement is placed in a manner consistent with paragraph (c) of this section.

(b) *Outer packaging.* If the product or container is normally packaged, wrapped, or otherwise covered when viewed by the purchaser at the time of the purchase the warning statement described in § 82.106 shall appear on any outer packaging, wrapping or other covering used in the retail display of the product or container, such that the warning statement is clearly legible and conspicuous at the time of the purchase. If the outer packaging has a display panel that is normally viewed by the purchaser at the time of the purchase, the warning statement shall appear on such display panel. If the warning statement so appears on such product's or container's outer packaging, it need not appear on the surface of the product or container, as long as the statement also fulfills all other requirements of this subpart. The warning statement need not appear on such outer packaging if either:

(1) the warning statement appears on the surface of the product or container, consistent with paragraph (a) of this section, and is clearly legible and conspicuous through any outer packaging, wrapping or other covering used in display; or

(2) the warning statement is placed in a manner consistent with paragraph (c) of this section.

(c) *Alternative placement.* The warning statement may be placed on a hang tag, tape, card, sticker, invoice, bill of lading, supplemental printed material, or similar overlabeling that is securely attached to the container, product, outer packaging or display case, or accompanies the product containing or manufactured with a controlled substance or a container containing class I or class II substances through its sale to the consumer or ultimate consumer. For prescription medical products that have been found to be essential for patient health by the Food and Drug Administration, the warning statement may be placed in supplemental printed material intended to be read by the prescribing physician, as long as the following statement is placed on the product, its packaging, or supplemental printed material intended to be read by the patient: ''This product contains [insert name of substance], a substance which harms the environment by depleting ozone in the upper atmosphere.'' In any case, the warning statement must be clearly legible and conspicuous at the time of the purchase.

(d) *Products not viewed by the purchaser at the time of purchase.* Where the purchaser of a product cannot view a product, its packaging or alternative labeling such that the warning statement is clearly legible and conspicuous at the time of purchase, as specified under paragraphs (a), (b), or (c) of this section, the warning statement may be placed in the following manner:

(1) Where promotional printed material is prepared for display or distribution, the warning statement may be placed on such promotional printed material such that it is clearly legible and conspicuous at the time of purchase; or

(2) The warning statement may be placed on the product, on its outer packaging, or on alternative labeling, consistent with paragraphs (a), (b), or (c) of this section, such that the warning statement is clearly legible and conspicuous at the time of product delivery, if the product may be returned by the purchaser at or after the time of delivery or if the purchase is not complete until the time of delivery (e.g., products delivered C.O.D.).

§ 82.110 Form of label bearing warning statement.

(a) *Conspicuousness and contrast.* The warning statement shall appear in conspicuous and legible type by typography, layout, and color with other printed matter on the label. The warning

statement shall appear in sharp contrast to any background upon which it appears. Examples of combinations of colors which may not satisfy the proposed requirement for sharp contrast are: black letters on a dark blue or dark green background, dark red letters on a light red background, light red letters on a reflective silver background, and white letters on a light gray or tan background.

(b) *Name of substance.* The name of the class I or class II substance to be inserted into the warning statement shall be the standard chemical name of the substance as listed in 40 CFR part 82, appendix A to subpart A, except that:

(1) The acronym ''CFC'' may be substituted for ''chlorofluorocarbon.''

(2) The acronym ''HCFC'' may be substituted for ''hydrochlorofluorocarbon.''

(3) The term ''1,1,1-trichloroethane'' may be substituted for ''methyl chloroform.''

(c) *Combined statement for multiple class I substances.* If a container containing or a product contains or is manufactured with, more than one class I or class II substance, the warning statement may include the names of all of the substances in a single warning statement, provided that the combined statement clearly distinguishes which substances the container or product contains and which were used in the manufacturing process.

(d) *Format.* (1) The warning statement shall be blocked within a square or rectangular area, with or without a border. (2) The warning statement shall appear in lines that are parallel to the surrounding text on the product's PDP, display panel, supplemental printed material or promotional printed material.

(e) *Type style.* The ratio of the height of a capital letter to its width shall be such that the height of the letter is no more than 3 times its width; the signal word ''WARNING'' shall appear in all capital letters.

(f) *Type size.* The warning statement shall appear at least as large as the type sizes prescribed by this paragraph. The type size refers to the height of the capital letters. A larger type size materially enhances the legibility of the statement and is desirable.

(1) *Display panel or outer packaging.* Minimum type size requirements for the warning statement are given in Table 1 to this paragraph and are based upon the area of the display panel of the product or container. Where the statement is on outer packaging, as well as the display panel area, the statement shall appear in the same minimum type size as on the display panel.

TABLE 1 TO § 82.110(f)(1)

	Area of display panel (sq. in.)					
	0–2	>2–5	>5–10	>10–15	>15–30	>30
Type size (in.) [1]						
Signal word	3/64	1/16	3/32	7/64	1/8	5/32
Statement	3/64	3/64	1/16	3/32	3/32	7/64

>Means greater than.
[1] Minimum height of printed image of letters.

(2) *Alternative placement.* The minimum type size for the warning statement on any alternative placement which meets the requirements of § 82.108(c) is 3/32 inches for the signal word and 1/16 of an inch for the statement.

(3) *Promotional printed material.* The minimum type size for the warning statement on promotional printed material is 3/32 inches for the signal word and 1/16 of an inch for the statement, or the type size of any surrounding text, whichever is larger.

§ 82.112 Removal of label bearing warning statement.

(a) *Prohibition on removal.* Except as described in paragraph (b) or (c) of this section, any warning statement that accompanies a product or container introduced into interstate commerce, as required by this subpart, must remain with the product or container and any product incorporating such product or container, up to and including the point of sale to the ultimate consumer.

(b) *Incorporation of warning statement by subsequent manufacturers.* A manufacturer of a product that incorporates a product that is accompanied by a label bearing the warning statement may remove such label from the incorporated product if the information on such label is incorporated into a warning statement accompanying the manufacturer's product, or if, pursuant to paragraph (c) of this section, the manufacturer of the product is not required to pass through the information contained on or incorporated in the product's label.

(c) *Manufacturers that incorporate products manufactured with controlled substances.* A manufacturer that incorporates into its own product a component product that was purchased from another manufacturer, was manufactured with a process that uses a controlled substance(s), but does not contain such substance(s), may remove such label from the incorporated product and need not apply a warning statement to its own product, if the manufacturer does not use a controlled substance in its own manufacturing process. A manufacturer that uses controlled substances in its own manufacturing process, and is otherwise subject to the regulations of this subpart, must label pursuant to § 82.106, but need not include information regrading the incorporated product on the required label.

(d) *Manufacturers, distributors, wholesalers, retailers that sell spare parts manufactured with controlled substances solely for repair.* Manufacturers, distributors, wholesalers, and retailers that purchase spare parts manufactured with a class I substance from another manufacturer or supplier, and sell such spare parts for the sole purpose of repair, are not required to pass through an applicable warning label if such products are removed from the original packaging provided by the manufacturer from whom the products are purchased. Manufacturers of the spare parts manufactured with controlled substances must still label their products; furthermore, manufacturers, importers, and distributors of such products must pass through the labeling information as long as products remain assembled and packaged in the manner assembled and packaged by the original manufacturer. This exemption shall not apply if a spare part is later used for manufacture and/or for purposes other than repair.

§ 82.114 Compliance by manufacturers and importers with requirements for labeling of containers of controlled substances, or products containing controlled substances.

(a) *Compliance by manufacturers and importers with requirements for labeling of containers of controlled substances, or products containing controlled substances.* Each manufacturer of a product incorporating another product or container containing a controlled substance, to which § 82.102 (a)(1), or, (a)(2) or (b)(1) applies, that is purchased or obtained from another manufacturer or supplier, is required to pass through and incorporate the labeling information that accompanies such incorporated product in a warning statement accompanying the manufacturer's finished product. Each importer of a product, or container containing a controlled substance, to which § 82.102 (a)(1), (a)(2), or (b)(1) applies, including a component product or container incorporated into the product, that is purchased from a foreign manufacturer or supplier, is required to apply a label, or to ensure that a label has been properly applied, at the site of U.S. Customs clearance.

(b) *Reliance on reasonable belief.* The manufacturer or importer of a product that incorporates another product container from another manufacturer or supplier may rely on the labeling information (or lack thereof) that it receives with the product, and is not required to independently investigate whether the requirements of this subpart are applicable to such purchased product or container, as long as the manufacturer reasonably believes that the supplier or foreign manufacturer is reliably and accurately complying with the requirements of this subpart.

(c) *Contractual obligations.* A manufacturer's or importer's contractual relationship with its supplier under which the supplier is required to accurately label, consistent with the requirements of this subpart, any products containing a controlled substance or containers of a controlled substance that are supplied to the manufacturer or importer, is evidence of reasonable belief.

§ 82.116 Compliance by manufacturers or importers incorporating products manufactured with controlled substances.

(a) *Compliance by manufacturers or importers incorporating products manufactured with controlled substances, or importing products manufactured with controlled substances.* Each manufacturer or importer of a product incorporating another product to which § 82.102 (a)(3), or, (b)(2) applies, that is purchased from another manufacturer or supplier, is not required to pass through and incorporate the labeling information that accompanies such incorporated product in a warning statement accompanying the manufacturer's or importer's finished product. Importers of products to which § 82.102 (a)(3) or (b)(2) applies are required to apply a label, or to ensure that a label has been properly applied at the site of U.S. Customs clearance.

(b) *Reliance on reasonable belief.* The importer of a product purchased or obtained from a foreign manufacturer or supplier, which product may have been manufactured with a controlled substance, may rely on the information that it receives with the purchased product, and is not required to independently investigate whether the requirements of this subpart are applicable to the purchased or obtained product, as long as the importer reasonably believes that there was no use of controlled substances by the final manufacturer of the product being imported.

(c) *Contractual obligations.* An importer's contractual relationship with its supplier under which the supplier is required to accurately label, consistent with the requirements of this subpart, any products manufactured with a controlled substance that are supplied to the importer, or to certify to the importer whether a product was or was not manufactured with a controlled substance is evidence of reasonable belief.

§ 82.118 Compliance by wholesalers, distributors and retailers.

(a) *Requirement of compliance by wholesalers, distributors and retailers.* All wholesalers, distributors and retailers of products or containers to which this subpart applies are required to pass through the labeling information that accompanies the product, except those purchasing from other manufacturers or suppliers spare parts manufactured with controlled substances and selling those parts for the demonstrable sole purpose of repair.

(b) *Reliance on reasonable belief.* The wholesaler, distributor or retailer of a product may rely on the labeling information that it receives with the product or container, and is not required to independently investigate whether the requirements of this subpart are applicable to the product or container, as long as the wholesaler, distributor or retailer reasonably believes that the supplier of the product or container is reliably and accurately complying with the requirements of this subpart.

(c) *Contractual obligations.* A wholesaler, distributor or retailer's contractual relationship with its supplier under which the supplier is required to accurately label, consistent with the requirements of this subpart, any products manufactured with a controlled substance that are supplied to the wholesaler, distributor or retailer is evidence of reasonable belief.

§ 82.120 Petitions.

(a) *Requirements for procedure and timing.* Persons seeking to apply the requirements of this regulation to a product containing a class II substance or a product manufactured with a class I or a class II substance which is not otherwise subject to the requirements, or to temporarily exempt a product manufactured with a class I substance, based on a showing of a lack of currently or potentially available alternatives, from the requirements of this regulation may submit petitions to: Labeling Program Manager, Stratospheric Protection Division, Office of Atmospheric Programs, U.S. Environmental Protection Agency, 6202–J, 401 M Street, S.W., Washington, D.C. 20460. Such persons must label their products while such petitions are under review by the Agency.

(b) *Requirement for adequate data.* Any petition submitted under paragraph (a) of this section shall be accompanied by adequate data, as defined in § 82.120(c). If adequate data are not included by the petitioner, the Agency may return the petition and request specific additional information.

(c) *Adequate data.* A petition shall be considered by the Agency to be supported by adequate data if it includes all of the following:

(1) A part clearly labeled ''Section I.A.'' which contains the petitioner's full name, company or organization name, address and telephone number, the product that is the subject of the petition, and, in the case of a petition to temporarily exempt a product manufactured with a class I substance from the labeling requirement, the manufacturer or manufacturers of that product.

(2) For petitions to temporarily exempt a product manufactured with a class I substance only, a part clearly labeled ''Section I.A.T.'' which states the length of time for which an exemption is requested.

(3) A part clearly labeled ''Section I.B.'' which includes the following statement, signed by the petitioner or an authorized representative:

''I certify under penalty of law that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information.''

(4) A part clearly labeled ''Section I.C.'' which fully explains the basis for the petitioner's request that EPA add the labeling requirements to or remove them from the product which is the subject of the petition, based specifically upon the technical facility or laboratory tests, literature, or economic analysis described in paragraphs (c) (5), (6) and (7) of this section.

(5) A part clearly labeled ''Section II.A.'' which fully describes any technical facility or laboratory tests used to support the petitioner's claim.

(6) A part clearly labeled ''Section II.B.'' which fully explains any values taken from literature or estimated on the basis of known information that are used to support the petitioner's claim.

(7) A part clearly labeled ''Section II.C.'' which fully explains any economic analysis used to support the petitioner's claim.

(d) *Criteria for evaluating petitions.* Adequate data in support of any petition to the Agency to add a product to the labeling requirement or temporarily remove a product from the labeling requirement will be evaluated based upon a showing of sufficient quality and scope by the petitioner of whether there are or are not substitute products or manufacturing processes for such product:

(1) That do not rely on the use of such class I or class II substance;

(2) That reduce the overall risk to human health and the environment; and

(3) That are currently or potentially available.

(e) *Procedure for acceptance or denial of petition.* (1) If a petition submitted under this section contains adequate data, as defined under paragraph (c) of this section, the Agency shall within 180 days after receiving the complete petition either accept the petition or deny the petition.

(2) If the Agency makes a decision to accept a petition to apply the requirements of this regulation to a product containing or manufactured with a class II substance, the Agency will notify the petitioner and publish a proposed rule in the Federal Register to apply the labeling requirements to the product.

(3) If the Agency makes a decision to deny a petition to apply the requirements of this regulation to a product containing or manufactured with a class II substance, the Agency will notify the petitioner and publish an explanation of the petition denial in the Federal Register.

(4) If the Agency makes a decision to accept a petition to temporarily exempt a product manufactured with a class I substance from the requirements of this regulation, the Agency will notify the petitioner and publish a proposed rule in the Federal Register to temporarily exempt the product from the labeling requirements. Upon notification by the Agency, such manufacturer may immediately cease its labeling process for such exempted products.

(5) If the Agency makes a decision to deny a petition to temporarily exempt a product manufactured with a class I substance from the requirements of this regulation, the Agency will notify the petitioner and may, in appropriate circumstances, publish an explanation of the petition denial in the Federal Register.

§ 82.122 Certification, recordkeeping, and notice requirements.

(a) *Certification.* (1) Persons claiming the exemption provided in § 82.106(b)(2) must submit a written certification to the following address: Labeling Program Manager, Stratospheric Protection Division, Office of Atmospheric Programs, 6205–J, 401 M Street, S.W., Washington, D.C. 20460.

(2) The certification must contain the following information:

(i) The exact location of documents verifying calendar year 1990 usage and the 95% reduced usage during a twelve month period;

(ii) A description of the records maintained at that location;

(iii) A description of the type of system used to track usage;

(iv) An indication of which 12 month period reflects the 95% reduced usage, and;

(v) Name, address, and telephone number of a contact person.

(3) Persons who submit certifications postmarked on or before May 15, 1993, need not place warning labels on their products manufactured using CFC–113 or methyl chloroform as a solvent. Persons who submit certifications postmarked after May 15, 1993, must label their products manufactured using CFC–113 or methyl chloroform as a solvent for 14 days following such submittal of the certification.

(4) Persons certifying must also include a statement that indicates their future annual use will at no time exceed 5% of their 1990 usage.

(5) Certifications must be signed by the owner or a responsible corporate officer.

(6) If the Administrator determines that a person's certification is incomplete or that information supporting the exemption is inadequate, then products manufactured using CFC–113 or methyl chloroform as a solvent by such person must be labeled pursuant to § 82.106(a).

(b) *Recordkeeping.* Persons claiming the exemption under section 82.106(b)(2) must retain supporting documentation at one of their facilities.

(c) *Notice Requirements.* Persons who claim an exemption under § 82.106(b)(2) must submit a notice to the address in paragraph (a)(1) of this section within 30 days of the end of any 12 month period in which their usage of CFC–113 or methyl chloroform used as a solvent exceeds the 95% reduction from calendar year 1990.

§ 82.124 Prohibitions.

(a) *Warning statement.* (1) *Absence or presence of warning statement.* (i) Applicable May 15, 1993, except as indicated in paragraph (a)(5) of this section, no container or product identified in § 82.102(a) may be introduced into interstate commerce unless it bears a warning statement that complies with the requirements of § 82.106(a) of this subpart, unless such labeling is not required under § 82.102(c), § 82.106(b), § 82.112 (c) or (d), § 82.116(a), § 82.118(a), or temporarily exempted pursuant to § 82.120.

(ii) On January 1, 2015, or any time between May 15, 1993 and January 1, 2015 that the Administrator determines for a particular product manufactured with or containing a class II substance that there are substitute products or manufacturing processes for such product that do not rely on the use of a class I or class II substance, that reduce the overall risk to human health and the environment, and that are currently or potentially available, no product identified in § 82.102(b) may be introduced into interstate commerce unless it bears a warning statement that complies with the requirements of § 82.106, unless such labeling is not required under § 82.106(b), § 82.112 (c) or (d), § 82.116(a) or § 82.118(a).

(2) *Placement of warning statement.* (i) On May 15, 1993, except as indicated in paragraph (a)(5) of this section, no container or product identified in § 82.102(a) may be introduced into interstate commerce unless it bears a warning statement that complies with

the requirements of § 82.108 of this subpart, unless such labeling is not required under § 82.102(c), § 82.106(b), § 82.112 (c) or (d), § 82.116(a), § 82.118(a), or temporarily exempted pursuant to § 82.120.

(ii) On January 1, 2015, or any time between May 15, 1993 and January 1, 2015 that the Administrator determines for a particular product manufactured with or containing a class II substance that there are substitute products or manufacturing processes for such product that do not rely on the use of a class I or class II substance, that reduce the overall risk to human health and the environment, and that are currently or potentially available, no product identified in § 82.102(b) may be introduced into interstate commerce unless it bears a warning statement that complies with the requirements of § 82.108 of this subpart, unless such labeling is not required under § 82.106(b), § 82.112 (c) or (d), § 82.116(a) or § 82.118(a).

(3) *Form of label bearing warning statement.* (i) Applicable May 15, 1993, except as indicated in paragraph (a)(5) of this section, no container or product identified in § 82.102(a) may be introduced into interstate commerce unless it bears a warning statement that complies with the requirements of § 82.110, unless such labeling is not required pursuant to § 82.102(c), § 82.106(b), § 82.112 (c) or (d), § 82.116(a), § 82.118(a), or temporarily exempted pursuant to § 82.120.

(ii) On January 1, 2015, or any time between May 15, 1993 and January 1, 2015 that the Agency determines for a particular product manufactured with or containing a class II substance, that there are substitute products or manufacturing processes that do not rely on the use of a class I or class II substance, that reduce the overall risk to human health and the environment, and that are currently or potentially available, no product identified in § 82.102(b) may be introduced into interstate commerce unless it bears a warning statement that complies with the requirements of § 82.110, unless such labeling is not required pursuant to § 82.106(b), § 82.112 (c) or (d), § 82.116(a), or § 82.118(a).

(4) On or after May 15, 1993, no person may modify, remove or interfere with any warning statement required by this subpart, except as described in § 82.112.

(5) In the case of any substance designated as a class I or class II substance after February 11, 1993, the prohibitions in paragraphs (a)(1)(i), (a)(2)(i), and (a)(3)(i) of this section shall be applicable one year after the designation of such substance as a class I or class II substance unless otherwise specified in the designation.

[FR Doc. 95–343 Filed 1–18–95; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Thursday
January 19, 1995

Part VII

Department of Labor

Employment and Training Administration
Wage and Hour Division

20 CFR Part 655
29 CFR Part 507

Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H–1B Visas in Specialty Occupations and as Fashion Models; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AA89

Wage and Hour Division

29 CFR Part 507

RIN 1215–AA69

Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H–1B Visas in Specialty Occupations and as Fashion Models

AGENCIES: Employment and Training Administration and Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration (ETA) and the Employment Standards Administration of the Department of Labor published final regulations governing the filing and enforcement of labor condition applications filed by employers seeking to employ foreign workers in specialty occupations and as fashion models of distinguished merit and ability under the H–1B nonimmigrant classification. At that time, ETA submitted the information collection requirements to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. This document amends the December 20, 1994, Federal Register document to display the OMB control numbers and announces the effective date for the sections containing information collection requirements for which OMB approval has been received.

DATES: The revision of 20 CFR part 655 and 29 CFR part 507 published December 20, 1994 (59 FR 65646) and these amendments are effective January 19, 1995. Form ETA 9035, published as an appendix to this document, may be used on or after January 19, 1995. The prior version of Form ETA 9035, published at 57 FR 1316, 1339–1342 (January 13, 1992) will be accepted for filing through January 18, 1995.

FOR FURTHER INFORMATION CONTACT: On 20 CFR part 655, subpart H, and 29 CFR part 507, subpart H, contact Mr. Patrick Stange, Nonagricultural Unit, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N–4456, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219–5263 (this is not a toll-free number).

On 20 CFR part 655, subpart I, and 29 CFR part 507, subpart I, contact Mr. Thomas Shierling, Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act's (PRA's) provisions on information collection are triggered when an employer files a labor condition application on Form ETA 9035 with the Department of Labor (Department), as a condition for being able to employ a professional in a specialty occupation or a fashion model of distinguished merit and ability under the H–1B nonimmigrant classification. The labor condition application is a prerequisite to filing a petition with the Immigration and Naturalization Service of the Department of Justice (INS) for approval under such nonimmigrant classification. Employers are required to file labor condition applications with the Department attesting to certain conditions related to the employment of H–1B nonimmigrants.

The labor condition applications, required under sections 101(a)(15)(H)(i)(b) and 212(n) of the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*), pertain to the absence of adverse effect on wages and working conditions, absence of a strike or lockout in the occupation in which H–1B nonimmigrants are to be employed at the place of employment, and provision of notice of filing to the employer's employees and to H–1B nonimmigrants employed by the employer. Attestations are made on Form ETA 9035, a copy of which is published as an appendix to this document, but which will not be codified in the Code of Federal Regulations.

The attestation process is administered by the Employment and Training Administration (ETA) of the Department, while complaints and investigations regarding the labor condition applications filed by employers are handled by the Wage and Hour Division of the Department's Employment Standards Administration (ESA).

Public reporting burden for this collection of information is estimated to average 1¼ hours including the time for reviewing instructions, searching existing information/data sources, gathering and maintaining the information/data needed, and preparing the application.

The Office of Management and Budget (OMB) reviewed the collection of information requirements for employers filing labor condition applications as a condition to petition INS for H–1B nonimmigrant classification in accordance with the PRA, 44 U.S.C. 3501 *et seq.*, and 5 CFR part 1320. OMB approved all information requirements contained in 20 CFR part 655, subpart H, and 29 CFR part 507, subpart H, under OMB clearance number 1205–0310.

On January 10, 1995, OMB approved the information collection provisions until November 30, 1997.

Authority

8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n) and 1184, and 29 U.S.C. 49 *et seq.*, and Pub. L. 102–232, 105 stat. 1733, 1748 (8 U.S.C. 1182 note).

Signed at Washington, DC, this 13th day of January, 1995.

Doug Ross,

Assistant Secretary for Employment and Training.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

Title 20, part 655, subpart H, and title 29, part 507, subpart H, of the Code of Federal Regulations are hereby amended as follows:

PART 655—[AMENDED]

1. The authority citation for 20 CFR part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H) (i) and (ii), 1182 (m) and (n), 1184, 1188, and 1288(c) 29 U.S.C. 49 *et seq.*; sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note); sec 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); and 8 CFR 214.2(h)(4)(i).

Section 655.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii) 1184, and 1188; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184; 29 U.S.C. 49 *et seq.*, and 8 CFR 214.2(H)(4)(i).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188; and 29 U.S.C. 49 *et seq.*

Subparts D and E issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 1733, 1748 (8 U.S.C. 1182 note).

Subparts F and G issued under 8 U.S.C. 1184 and 1288(c); and 29 U.S.C. 49 *et seq.*

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1182 note).

Subparts J and K issued under 29 U.S.C. 49 *et seq.*; and sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

2. In 20 CFR 655.730, by adding a parenthetical, as follows, at the end of the regulatory text:

§ 655.730 Labor condition application.

* * * * *

(Approved by the Office of Management and Budget under control number 1205–0310.)

3. In 20 CFR 655.760, by adding a parenthetical, as follows, at the end of the regulatory text:

§ 655.760 Public access; retention of records.

* * * * *

(Approved by the Office of Management and Budget under control number 1205–0310).

PART 507—[AMENDED]

4. The Authority citation for title 29 CFR part 507, subparts H and I, continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184, and 29 U.S.C. 49 *et seq.*, and Pub. L. 102–232, 105 stat. 1733, 1748 (8 U.S.C. 1182 note).

5. In 29 CFR 507.730, by adding a parenthetical, as follows, at the end of the regulatory text:

§ 507.730 Labor condition application.

* * * * *

(Approved by the Office of Management and Budget under control number 1205–0310.)

6. In 29 CFR 507.760, by adding a parenthetical, as follows, at the end of the regulatory text:

§ 507.760 Public access; retention of records.

* * * * *

(Approved by the Office of Management and Budget under control number 1205–0310.)

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix 1 (Not To Be Codified in the CFR): Form ETA 9035

Printed below is a copy of *Form ETA 9035.*

BILLING CODE 4510–30–M

Labor Condition Application for H-1B Nonimmigrants

U.S. Department of Labor
Employment and Training Administration
U.S. Employment Service

OMB Approval No.: 1205-0310
Expiration Date: 11-30-97

1. Full Legal Name of Employer

2. Federal Employer I.D. Number

3. Employer's Telephone No. ( )

4. Employer's FAX No. ( )

5. Employer's Address (No., Street, City, State, and ZIP Code)

6. Address Where Documentation is Kept (If different than item 5)

7. OCCUPATIONAL INFORMATION (Use attachment if additional space is needed)

(a) Three-digit Occupational Group Code (From Appendix 2): _____ (b) Job Title (Check Box if Part-Time): _____ ☐

(c) No. of H-1B Nonimmigrants	(d) Rate of Pay	(e) Prevailing Wage Rate and its Source (see instructions)	(f) Period of Employment From	To	(g) Location(s) Where H-1B Nonimmigrants Will Work (see instructions)
_____	$_____	$_____ ☐SESA ☐Other:_____	_____	_____	_____
_____	$_____	$_____ ☐SESA ☐Other:_____	_____	_____	_____

8. EMPLOYER LABOR CONDITION STATEMENTS (Employers are required to develop and maintain documentation supporting labor condition statements 8(a) and 8(d). Employers are further required to make available for public examination a copy of the labor condition application and necessary supporting documentation within one (1) working day after the date on which the application is filed with DOL. Check **each** box to indicate that the employer will comply with **each** statement.)

☐ (a) H-1B nonimmigrants will be paid at least the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for the occupation in the area of employment, whichever is higher.

☐ (b) The employment of H-1B nonimmigrants will not adversely affect the working conditions of workers similarly employed in the area of intended employment.

☐ (c) On the date this application is signed and submitted, there is not a strike, lockout or work stoppage in the course of a labor dispute in the occupation in which H-1B nonimmigrants will be employed at the place of employment. If such a strike or lockout occurs after this application is submitted, I will notify ETA within 3 days of the occurrence of such a strike or lockout and the application will not be used in support of petition filings with INS for H-1B nonimmigrants to work in the same occupation at the place of employment until ETA determines the strike or lockout has ceased.

☐ (d) A copy of this application has been, or will be, provided to each H-1B nonimmigrant employed pursuant to this application, and, as of this date, notice of this application has been provided to workers employed in the occupation in which H-1B nonimmigrants will be employed: (check appropriate box)

☐ (i) Notice of this filing has been provided to the bargaining representative of workers in the occupation in which H-1B nonimmigrants will be employed; or

☐ (ii) There is no such bargaining representative; therefore, a notice of this filing has been posted and was, or will remain, posted for 10 days in at least two conspicuous locations where H-1B nonimmigrants will be employed.

9. DECLARATION OF EMPLOYER. Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the information provided on this form is true and correct. In addition, I declare that I will comply with the Department of Labor regulations governing this program and, in particular, that I will make this application, supporting documentation, and other records, files and documents available to officials of the Department of Labor, upon such official's request, during any investigation under this application or the Immigration and Nationality Act.

Name and Title of Hiring or Other Designated Official _____ Signature _____ Date _____

Complaints alleging misrepresentation of material facts in the labor condition application and/or failure to comply with the terms of the labor condition application may be filed with any office of the Wage and Hour Division of the United States Department of Labor.

AN APPLICATION CERTIFIED BY DOL MUST BE FILED IN SUPPORT OF AN H-1B VISA PETITION WITH THE INS.

FOR U.S. GOVERNMENT AGENCY USE ONLY: By virtue of my signature below, I acknowledge that this application is hereby certified and will be valid from _____ through _____.

Signature and Title of Authorized DOL Official _____ ETA Case No. _____ Date _____

Subsequent DOL Action: Suspended _____ (date) Invalidated _____ (date) Withdrawn _____ (date)

The Department of Labor is not the guarantor of the accuracy, truthfulness or adequacy of a certified labor condition application.

Public reporting burden for this collection of information is estimated to average 1½ hour per response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of U.S. Employment Service, Department of Labor, Room N-4470 and/or the Office of IRM Policy, DOL, Room N-1301, 200 Constitution Avenue, N.W., Washington, DC 20210. (1205-0310).

DO NOT SEND THE COMPLETED FORM TO EITHER OF THESE OFFICES

ETA 9035 (Rev. Dec. 1994)

INSTRUCTIONS FOR COMPLETING FORM ETA 9035 - LABOR CONDITION APPLICATION FOR H-1B NONIMMIGRANTS

IMPORTANT: READ CAREFULLY BEFORE COMPLETING FORM

Print legibly in ink or use a typewriter. Sign and date one form in original signature. Citations below to "regulations" are citations to identical provisions at 20 CFR 655, subparts H and I, and to 29 CFR 507, subparts H and I.

To knowingly furnish any false information in the preparation of this form and any supporting documentation thereto, or to aid, abet or counsel another to do so is a felony, punishable by $10,000 fine or five years in the penitentiary, or both (18 U.S.C. 1001). Other penalties apply as well to fraud or misuse of this immigration document (U.S.C. 1546) and to perjury with respect to this form (18 U.S.C. 1546 and 1621).

Employers seeking to hire H-1B nonimmigrants in specialty occupations or as fashion models of distinguished merit and ability must submit the completed and dated original Form ETA 9035 (or a facsimile) and one copy of the completed original Form ETA 9035 to the regional certifying officer in the Department of Labor (DOL), Employment and Training Administration (ETA) regional office having jurisdiction over the State in which the position is located. See 20 CFR 655.720 for ETA regional office addresses. An application which is complete and has no obvious inaccuracies will be certified by DOL and returned to the employer, who may then file it in support of its petition with the Immigration and Naturalization Service.

Item 1. Full Legal Name of Employer. Enter full legal name of business, firm or organization, or, if an individual, enter name used for legal purposes on documents.

Item 2. Federal Employer I.D. Number. Enter employer's Federal Employer Identification Number (EIN) assigned by the Internal Revenue Service.

Item 3. Employer's Telephone No. Self-explanatory.

Item 4. Employer's FAX No. Self-explanatory.

Item 5. Employer's Address. Self-explanatory.

Item 6. Address Where Documentation is Kept. Self-explanatory.

Item 7. Occupational Information. Enter the information requested under the appropriate subheading. If necessary, continue on an attachment.

Item 7(a). Three-Digit Occupational Group Code. Enter the three-digit code from Appendix 2 which most clearly describes the job to be performed. (DOL purposes only.)

Item 7(b). Job Title. Enter the common name or payroll title of the job being offered. Check box to the right of the blank if position is part-time. A separate labor condition application shall be filed for each occupation in which H-1B nonimmigrants will be employed.

Item 7(c). Number of H-1B Nonimmigrants. Enter the number of H-1B nonimmigrants that will be hired in the three-digit occupational code stated in item 7(a).

Item 7(d). Rate of Pay. Enter the salary to be paid in terms of the amount per hour, week, year, etc. If a wage range is listed for this item, the salary for each H-1B nonimmigrant shall be maintained in support of the application.

Item 7(e). Prevailing Wage Rate and its Source. Enter the prevailing wage rate in terms of the the amount per hour, week, year, etc. If the employer is replying on a wage determination obtained from a State Employment Security Agency, check the box marked "SESA." If the employer is using another source, check the 'Other" box and specify such other source: i.e., published wage survey, or other source utilized by the employer to determine the prevailing wage for the occupational classification in which H-1B nonimmigrants will be employed, e.g., "collective bargaining agreement," or "Bureau of Labor Statistics Occupational Compensation Survey, Denver, Colorado, Metropolitan Area." (Only 1 box can be checked per line item).

Item 7(f). Period of Employment. Enter the starting and ending dates during which the H-1B nonimmigrants will be employed.

Item 7(g). Locations Where H-1B Nonimmigrants Will Work. Enter the city and State of site or location where the work will actually be performed.

Item 8. Employer Labor Condition Statements. The employer must attest by checking off the conditions listed in (a) through (d) and by signing the application form. Employers must develop and maintain documentation to support labor condition statements 8(a) and 8(d). Documentation in support of a labor condition application shall be retained at the employer's principal place of business or worksite and made available to DOL upon such official's request. See 20 CFR 655.731 through 655.734 for guidance on the documentation that must support each labor condition statement.

Item 8(a). The employer must attest that H-1B nonimmigrants will be paid wages which are at least the higher of the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for the occupational classification in the area of intended employment.

Item 8(b). The employer must attest that the employment of H-1B nonimmigrants in the occupations named will not adversely affect the working conditions of workers similarly employed in the area of intended employment.

Item 8(c). The employer must attest that on the date the application is signed and submitted, there is not a strike, lockout or work stoppage in the course of a labor dispute in the named occupation at the worksite. If such a strike or lockout occurs after this application is submitted, the employer must notify ETA within 3 days of the occurrence of such a strike or lockout and the application may not be used in support of petition filings with INS for H-1B nonimmigrants to work in the same occupation at the place of employment until ETA determines the strike or lockout has ceased.

Item 8(d). The employer must attest that as of the date of filing, notice of the labor condition application has been provided to workers employed in the named occupation. The application may be provided to the workers through the bargaining representative, or where there is no such bargaining representative, notice of the filing must be posted in conspicuous places where H-1B nonimmigrants will be employed. Further, the employer must attest that each H-1B nonimmigrant employed pursuant to the application will be provided with a copy of the application. The notification shall be provided no later than the date the H-1B nonimmigrant reports to work at the place of employment.

Item 9. Declaration of Employer. One copy of this form must bear the original signature of the employer. By signing this form, the employer is attesting to the accuracy of the labor condition statements listed in items 8(a) through (d) and to compliance with these conditions. False statements are subject to Federal criminal penalties, as stated above. Failure to meet a condition of the application regarding strikes or lockouts, substantial failure to meet a condition of the application regarding notification of the bargaining unit representative, employees, or H-1B nonimmigrants, willful failure to meet a condition of the application regarding wages or working conditions, or misrepresentation of a material fact may result in additional penalties.

BILLING CODE 4510–30–C

Appendix 2 (Not To Be Codified in the CFR): DOT Three-Digit Occupational Groups Codes for Professional, Technical and Managerial Occupations and Fashion Models

Printed below is a copy of DOT Three-Digit Occupational Groups Codes for Professional, Technical and Managerial Occupations and Fashion Models.

Three-Digit Occupational Groups

Professional, Technical, and Managerial Occupations and Fashion Models

Occupations in Architecture, Engineering, and Surveying

001 Architectural Occupations
002 Aeronautical engineering Occupations
003 Electrical/Electronics Engineering Occupations
005 Civil Engineering Occupations
006 Ceramic Engineering Occupations
007 Mechanical Engineering Occupations
008 Chemical Engineering Occupations
010 Mining and Petroleum Engineering Occupations
011 Metallurgy and Metallurgical Engineering Occupations
012 Industrial Engineering Occupations
013 Agricultural Engineering Occupations
014 Marine Engineering Occupations
015 Nuclear Engineering Occupations
017 Drafters
018 Surveying/Cartographic Occupations
019 Other Occupations in Architecture, Engineering, and Surveying

Occupations in Mathematics and Physical Sciences

020 Occupations in Mathematics
021 Occupations in Astronomy
022 Occupations in Chemistry
023 Occupations in Physics
024 Occupations in Geology
025 Occupations in Meteorology
029 Other Occupations in Mathematics and Physical Sciences

Computer-Related Occupations

030 Occupations in Systems Analysis and Programming
031 Occupations in Data Communications and Networks
032 Occupations in Computer System User Support
033 Occupations in Computer System Technical Support
039 Other Computer-Related Occupations

Occupations in Life Sciences

040 Occupations in Agricultural Sciences
041 Occupations in Biological Sciences
045 Occupations in Psychology
049 Other Occupations in Life Sciences

Occupations in Social Sciences

050 Occupations in Economics
051 Occupations in Political Science
052 Occupations in History
054 Occupations in Sociology
055 Occupations in Anthropology
059 Other Occupations in Social Sciences

Occupations in Medicine and Health

070 Physicians and Surgeons
071 Osteopaths
072 Dentists
073 Veterinarians
074 Pharmacists
076 Therapists
077 Dieticians
078 Occupations in Medical and Dental Technology
079 Other Occupations in Medicine and Health

Occupations in Education

090 Occupations in College and University Education
091 Occupations in Secondary School Education
092 Occupations in Preschool, Primary School, and Kindergarten Education
094 Occupations in Education of Persons With Disabilities
096 Home Economists and Farm Advisers
097 Occupations in Vocational Education
099 Other Occupations in Education

Occupations in Museum, Library, and Archival Sciences

100 Librarians
101 Archivists
102 Museum Curators and Related Occupations
109 Other Occupations in Museum, Library, and Archival Sciences

Occupations in Law and Jurisprudence

110 Lawyers
111 Judges
119 Other Occupations in Law and Jurisprudence

Occupations in Religion and Theology

120 Clergy
129 Other Occupations in Religion and Theology

Occupations in Writing

131 Writers
132 Editors: Publication, Broadcast, and Script
139 Other Occupations in Writing

Occupations in Art

141 Commercial Artists: Designers and Illustrators, Graphic Arts
142 Environmental, Product, and Related Designers
149 Other Occupations in Art

Occupations in Entertainment and Recreation

152 Occupations in Music
159 Other Occupations in Entertainment and Recreation

Occupations in Administrative Specializations

160 Accountants, Auditors, and Related Occupations
161 Budget and Management Systems Analysis Occupations
162 Purchasing Management Occupations
163 Sales and Distribution Management Occupations
164 Advertising Management Occupations
165 Public Relations Management Occupations
166 Personnel Administration Occupations
168 Inspectors and Investigators, Managerial and Public Service
169 Other Occupations in Administrative Occupations

Managers and Officials

180 Agriculture, Forestry and Fishing Industry Managers and Officials
181 Mining Industry Managers and Officials
182 Construction Industry Managers and Officials
183 Manufacturing Industry Managers and Officials
184 Transportation, Communication, and Utilities Industry Managers and Officials
185 Wholesale and Retail Trade Managers and Officials
186 Finance, Insurance, and Real Estate Managers and Officials
187 Service Industry Managers and Officials
188 Public Administration Managers and Officials
189 Miscellaneous Managers and Officials

Miscellaneous Professional, Technical, and Managerial Occupations

195 Occupations in Social and Welfare Work
199 Miscellaneous Professional, Technical, and Managerial Occupations

Sales Promotion Occupations

297 Fashion Models

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Federal Register

Thursday
January 19, 1995

Part VIII

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program; Solicitation of Proposals for Fiscal Year 1995; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program; Solicitation of Proposals for Fiscal Year 1995

Purpose

Notice is hereby given that under the authority contained in Section 1417(b)(6) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152(b)(6)), the Cooperative State Research, Education, and Extension Service (CSREES) will award competitive grants to colleges and universities for doctoral fellowships to meet national needs for the development of professional and scientific expertise in the food and agricultural sciences.

(The CSREES was established by Pub. L. No. 103–354, the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, and the functions of the Cooperative State Research Service were transferred to the CSREES by the Secretary of Agriculture in the Secretary's Memorandum 1010–1, Reorganization of the Department of Agriculture, October 20, 1994. A Final Rule amending the administrative provisions that apply to this program (7 CFR part 3402) was published in the Federal Register on December 30, 1994 (59 FR 68072).)

Eligibility

Please note that the authorizing legislation for the National Needs Graduate Fellowship Grants Program allows the award of grants to colleges and universities only; awards cannot be made to research foundations established by the college or university.

Available Funds

The amount available for this purpose in FY 1995 is approximately $3,395,000.

Targeted Areas

Food and agricultural sciences areas appropriate for fellowship applications are those in which shortages of expertise have been determined and targeted by CSREES for national needs doctoral fellowship support. In FY 1995, only the doctoral level of study will be supported. CSREES supports six national needs areas on a rotating basis of three needs areas per fiscal year. The targeted national needs areas to be supported in FY 1995 are: Biotechnology—Plant; Engineering—Food, Forest, Biological, or Agricultural; and Water Science. Approximately one-third of the available funds will be allocated to each of the three national needs areas. CSREES plans to support the remaining three national needs areas (Biotechnology—Animal; Human Nutrition and/or Food Science; and Marketing or Management—Food, Forest Products, or Agribusiness) in FY 1996. Although this procedure limits the participation of an applicant interested in a specific targeted national needs area to alternating years, it increases the likelihood that the applicant will obtain funding under the program each time a grant application is submitted.

Proposal Limitations

For the FY 1995 program, a proposal may request funding in only one national needs area. A proposal may request a minimum of two fellowships and a maximum of four fellowships in the national needs area for which funding is requested. No limitation is placed on the number of proposals an institution may submit. However, the same college or equivalent administrative unit within an institution may submit a maximum of three proposals: one in each of the three national needs areas supported. (No more than one proposal may be submitted in any one national needs area by the same college or equivalent administrative unit.) Additionally, total funds awarded to an institution under the program in FY 1995 shall not exceed $324,000.

Financial and Other Limitations

Each institution funded will receive $54,000 for each doctoral fellowship awarded. However, it is anticipated that total program funds available will not be evenly divisible by $54,000. Therefore, one fellowship may be supported on a partial basis with a lesser amount of funds. Except in the case of the partially funded fellowship, fellowship monies must be used to: (1) Support the same doctoral fellow for three years at $17,000 per year; and (2) provide for an institution annual cost-of-education allowance of $1,000, not to exceed a total of $3,000 over the three-year duration of the fellowship.

While proposals must document institution willingness to recruit and train at least two but not more than four fellows in a national needs area, CSREES may fund fewer fellows than requested in a proposal.

This program is highly competitive, and it is anticipated that available funding will support approximately 63 doctoral fellows through seven to ten grants in each of the three targeted areas.

Special International Study or Thesis/Dissertation Research Travel Allowances

CSREES has determined that no FY 1995 appropriations will be targeted to supplemental grants supporting special international study or thesis/dissertation research travel allowances. However, it is possible that no-year funds drawn from expired fellowship grants with unspent funds remaining will be used to support such supplemental grants in FY 1995. If CSREES determines that special international study or thesis/dissertation travel allowances will be awarded in FY 1995, a Federal Register notice supplementing this program announcement will be published supplying the information specified in 7 CFR 3402.5, sections (e) and (f).

Evaluation Criteria

There are no changes to the evaluation criteria or point weightings for FY 1995. The evaluation criteria as published in the administrative provisions will be used to evaluate proposals for the FY 1995 competition.

Application Information

An application package has been developed which provides the forms, instructions, and other relevant information needed by institutions to apply to the Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program described herein. Applicants should be aware that the proposal narrative must be typed on one side of the page only, using a font no smaller than 12 point, and double-spaced. All margins must be at least one inch. The proposal should be paginated and a Table of Contents should be included preceding the proposal narrative. Additionally, applicants are cautioned to comply with the 20-page limitation for the narrative section of the proposal and the inclusion of summary faculty vitae through the use of Form CSRS–708.

Copies of the application package may be requested from: Proposal Services Branch; Awards Management Division; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; Ag Box 2245; Washington, DC 20250–2245. The telephone number is (202) 401–5048. To request, via e-mail, that a copy of the application package be sent to you through regular mail, send your request including your name and mailing address to: psb@morrill.esusda.gov.

When and Where to Submit Proposals

An original plus five copies of a proposal and one copy of the institution's latest graduate catalog must be submitted. Proposals submitted through the mail should be sent to the address listed above and must be postmarked by April 14, 1995. Hand-delivered proposals must be submitted by April 14, 1995 to an express mail or a courier service or brought to Room 303, Aerospace Center, 901 D Street, SW., Washington, DC 20024. Proposals transmitted via a facsimile (FAX) machine will not be accepted.

Submission of an Intent to Submit a Proposal form (Form CSRS–706) is neither required nor requested in FY 1995.

Applicable Regulations

This program is subject to the administrative provisions found at 7 CFR part 3402. A Final Rule amending the administrative provisions for the Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program was published in the Federal Register on December 30, 1994 (59 FR 68072). In addition, the USDA Uniform Federal Assistance Regulations, 7 CFR part 3015, as amended; the Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 7 CFR part 3017; the Restrictions on Lobbying, 7 CFR part 3018; and the regulations regarding Audits of Institutions of Higher Education and Other Nonprofit Institutions, 7 CFR part 3051, apply to this program. Other Federal statutes and regulations that apply to this program are identified in the administrative provisions.

SUPPLEMENTARY INFORMATION: This program is listed in the Catalog of Federal Domestic Assistance under No. 10.210. For the reasons set forth in the Final Rule related notice to 7 CFR part 3015, subpart V, 48 FR 29115, June 24, 1983, when the authority to administer this program resided in the Agricultural Research Service, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the collection of information requirements for this program have been approved under OMB Document Nos. 0524–0022 and 0524–0024.

Program Contact

If you have questions concerning the submission of Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program proposals, please contact Dr. Wm. Jay Jackman, Higher Education Programs, CSREES, USDA, at (202) 401–1790 (voice), (202) 401–1770 (fax), or jjackman@morrill.esusda.gov (Internet).

Done at Washington, DC, this 12th day of January 1995.

William D. Carlson,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

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Federal Register

Thursday
January 19, 1995

Part IX

Securities and Exchange Commission

17 CFR Part 249
Form BD Amendments; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

Release No. 34–35224; File No. S7–2–95

RIN 3235–AG25

Form BD Amendments

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to Form BD.

SUMMARY: The Securities and Exchange Commission is proposing amendments to Form BD, the uniform broker-dealer registration form under the Securities Exchange Act of 1934. The proposed amendments are to implement recommended changes to the Central Registration Depository System, a computerized filing and data processing system operated by the National Association of Securities Dealers, Inc. that maintains registration information regarding broker-dealers and their registered personnel. Specifically, the amendments are intended to facilitate retrieval of disciplinary information through the redesigned Central Registration Depository by eliciting more precise disclosure and reorganizing items into categories. The changes to the disclosure section of Form BD are consistent with changes to the analogous section in Form U–4, the uniform form for registration of associated persons of a broker-dealer. Other changes to Form BD are more technical in nature and are intended to clarify certain information requests.

DATES: Comments should be submitted on or before February 21, 1995.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. All comment letters should refer to File No. S7–2–95. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Belinda Blaine, Deputy Chief Counsel, or Terry R. Young, Attorney, (202) 942–0073, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 7–10, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Securities and Exchange Commission (''Commission'') is proposing several amendments to Form BD (''Form''),[1] the uniform application form for broker-dealer registration under the Securities Exchange Act of 1934 (''Exchange Act'').[2] The proposed amendments to Form BD respond to design updates to the Central Registration Depository (''CRD'') system operated by the National Association of Securities Dealers, Inc. (''NASD''). The CRD is a customized electronic database that allows ''one-stop'' filing for broker-dealer registration among the various state and federal regulators and that maintains information relevant to a registrant's securities business.[3] Applicants for broker-dealer registration file a single Form BD with the NASD, which enters the information into the CRD system and then electronically forwards the information to the Commission and appropriate states for review.

Currently, the CRD system is used primarily as a means to facilitate broker-dealer registration with the Commission, certain SROs, and all of the states. In order to keep pace with advancements in information imaging and transmission, the NASD recently has initiated a comprehensive plan to overhaul the CRD system. Under this plan, the CRD system will be expanded beyond its principal function of facilitating broker-dealer registration to enhance its regulatory use by the Commission, SROs, and state securities regulators. Among other things, the redesigned CRD system will allow federal and state securities regulators to customize regulatory queries and reports. In addition, the redesigned CRD system ultimately is intended to enable broker-dealers and their associated persons to file Form BD and Form U–4 registration information with the NASD electronically by direct link with the CRD through a variety of methods, including computer-to-computer interface, network access, and standard dial-up access.[4]

To allow the NASD sufficient time to redesign the CRD to permit securities regulators to efficiently retrieve relevant information through searches by subject category, the Commission is proposing several amendments to Form BD. The proposed amendments are intended to elicit more precise information from applicants by asking more specific questions about an applicant's business. While the proposed amendments would increase the number of questions on the Form, the Form will be easier for applicants to complete because the specificity of the questions will lessen the need for descriptive textual information.

For instance, as discussed further below, the proposed amendments to the disclosure section, where most of the changes are proposed to be made, would provide the Commission, SROs, and state securities regulators with better information about a registrant's disciplinary history by: (1) grouping disciplinary information into related categories (*e.g.*, criminal charges and convictions); and (2) customizing the accompanying Disclosure Reporting Pages (''DRPs'') used to disclose details of the disciplinary history. The changes to the disciplinary section of the Form are consistent with changes to the analogous section in Form U–4, the uniform form for registration of associated persons of a broker-dealer, which have been approved by the North American Securities Administrators Association, Inc. (''NASAA'') and will be considered by the NASD's Board of Governors.[5]

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[1] 17 CFR 249.501.

[2] 15 U.S.C. §§ 78a *et seq.* Form BD was last amended in Securities Exchange Act Release No. 31398 (Nov. 4, 1992), 57 FR 53261. Form BD also is used by the NASD and all of the states.

[3] In Securities Exchange Act Release No. 31660 (Dec. 28, 1992), 58 FR 11 (''1992 Release''), the Commission, as part of its ongoing effort to reduce the costs associated with broker-dealer registration, joined the CRD system and adopted amendments to the broker-dealer registration process. The 1992 amendments required, among other things, that all broker-dealers, including government securities broker-dealers, applying for registration with the Commission on or after January 25, 1993, file Form BD with the CRD.

Direct participation in the CRD system has improved the efficiency of the registration process by creating a comprehensive, centralized database of all registrants, and by giving the Commission more immediate access to current data in broker-dealer filings. In addition, the new system has resulted in cost savings to registrants, who no longer are required to make multiple filings with the Commission, certain self-regulatory organizations (''SROs''), and state regulators. *See* 1992 Release, at 58 FR 11.

If the Commission adopts the amendments to Form BD, the Commission, at the same time, will adopt technical amendments to the registration rules to remove obsolete instructions. For example, Commission Rules 15b3–1 (17 CFR 240.15b3–1) and 15b6–1 (17 CFR 240.15b6–1) currently contain temporary filing instructions for the CRD that are obsolete and will be removed.

[4] According to the NASD, software will be developed to support off-line personal computer or firm system entry of application information. The new CRD system will include commentary screens that can be attached to specific items to provide information to applicants relating to the type or nature of the information being requested. Clarification of disclosure information also may be included with these commentary screens, including explanations of certain terms.

[5] NASAA approved amendments to Form U–4 at the 1994 NASAA Spring Conference. After the NASD Board of Governors adopts proposed amendments to Form U–4, they will be filed with the Commission pursuant to Section 19(b)(2) of the Exchange Act (15 U.S.C. § 78s(b)(2)) and Rule 19b-4 thereunder (17 CFR 240.19b-4).

In addition, the Commission is proposing new items to Form BD to enhance the disclosure with respect to U.S. broker-dealers that have foreign owners, broker-dealers that are affiliated with U.S. or foreign banks, and broker-dealers that conduct securities activities on the premises of financial institutions. Finally, the Commission is proposing several technical amendments to Form BD.

The amendments proposed by the Commission are the culmination of discussions between the staff of the Commission, NASAA's Forms Revision Committee, the NASD, the New York Stock Exchange, and representatives of the securities industry. The proposed amendments are discussed below in the order of significance.

II. Proposed Amendments to Form BD

A. Disciplinary History

The principal changes to Form BD concern proposed amendments to current Item 7. This item requests information about the disciplinary history of the applicant and its control affiliates, including information relating to statutory disqualifications,[6] other relevant history, and the applicant's financial soundness. Under the proposed amendments, Item 7 will be renumbered as Item 11. Consistent with proposed changes to Form U–4, new Item 11 will be reorganized to group related information under four broad disclosure categories: criminal, civil, regulatory, and financial. For example, in the criminal disclosure section, the proposed amendments group pending charges and final convictions, and separate the questions relating to felonies and misdemeanors in order to elicit more precise information from applicants and to facilitate the retrieval of such information from the CRD.[7] Moreover, in order to make the criminal history disclosure more comprehensive and complete, military court convictions, perjury, and conspiracy to commit certain misdemeanor offenses will be added to Items 11A and B. At the suggestion of NASAA, settlement agreements in investment-related civil actions brought against the applicant or control affiliate by a state or foreign financial regulatory authority will be added to Item 11H(1).

Currently, disclosure of bankruptcy proceedings has no time limitation. Because bankruptcy is not a basis for statutory disqualification under Sections 3(a)(39) and 15(b)(4) of the Exchange Act,[8] the Commission is proposing to require disclosure of bankruptcy proceedings in Item 11I(1) only for those occurring in the past ten years. Finally, technical amendments, such as revising the instructions and renumbering several questions, are proposed.[9]

The Commission also is proposing amendments to the corresponding DRPs, which are required to be completed when an applicant answers in the affirmative one of the disciplinary questions. Currently, Form BD includes one generic DRP for all disciplinary history questions. The proposed amendments would replace the single generic DRP with several customized DRPs to reflect more accurately the different classifications of disclosures that are required to be reported under proposed Item 11. For example, the proposed Regulatory DRP will contain specific sections that inquire into whether the applicant is or has been suspended or barred. If the applicant answers in the affirmative, the proposed DRP requires the applicant to specify the duration and capacity affected (*e.g.*, general securities principal, financial and operations principal, or options trading) by the suspension or bar. Moreover, the proposed Regulatory DRP, as well as the proposed Criminal and Civil Judicial DRPs, group together, under the same part and on the same page, final and pending disciplinary actions.

Although these amendments may increase the number of DRPs to be provided, they should not increase the cost and burden of filing Form BD, unless an applicant has an extensive disciplinary history. As discussed above, federal and state securities regulators will have greater access to enhanced regulatory information maintained in the CRD system and will be able to sort and retrieve disciplinary information by category on a more timely and specialized, *ad hoc* basis. In addition, the proposed new DRPs are largely the same as those recently proposed to be added to Form U–4 by NASAA.

B. Bank Securities Activities

In recent years, banks have become increasingly active in selling securities to the public.[10] The Commission believes that most bank sales of securities are being conducted through registered broker-dealers that are subsidiaries or affiliates of banks.[11] The

[6] Sections 15(b)(4) and 15(b)(6) of the Exchange Act authorize the Commission to deny registration to a broker-dealer if the broker-dealer or an associated person of the broker-dealer has engaged in the activities listed in those sections. 15 U.S.C. §§ 78*o*(b)(4) and (b)(6).

Section 3(a)(39) of the Exchange Act cross-references the activities enumerated in Section 15(b)(4) (B), (C), (D), (E), and (G). Section 3(a)(39) generally provides that a person is subject to a ''statutory disqualification'' if, among other things, that person: has been expelled or suspended from membership in an SRO or barred or suspended from association with an SRO member; has had his or her registration or association denied or suspended by the Commission or other appropriate regulatory agency; has willfully violated the federal securities laws or aided, abetted, or counselled others to do so; is permanently or temporarily enjoined by a court from acting in any capacity within the securities industry; has willfully made or caused to be made a false or misleading statement of material fact in filings required by the SROs; or has been convicted of any felony within the past ten years. 15 U.S.C. § 78c(a)(39).

[7] Current Item 7A(1) asks ''in the past ten years, has the applicant or a control affiliate been convicted of or plead guilty or nolo contendere (''no contest'') in a domestic or foreign court to: (1) a felony or misdemeanor involving: investment or an investment-related business; fraud, false statements, or omissions; wrongful taking of property; or bribery, forgery, counterfeiting, or extortion.'' Current Item 7G asks about pending proceedings. New Item 11A would ask ''in the past ten years has the applicant or a control affiliate: (1) been convicted of or plead guilty or nolo contendere (''no contest'') in a domestic, foreign or military court to any felony?; and (2) been charged with any felony?'' New Item 11B would ask ''in the past ten years, has the applicant or a control affiliate: (1) been convicted of or plead guilty or nolo contendere (''no contest'') in a domestic, foreign or military court to a misdemeanor involving: investments or an investment-related business, or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?; and (2) been charged with a misdemeanor specified in 11B(1)?''

[8] *See supra* note 6.

[9] Under the amendments, current Items 7B (1) and (2) are proposed Items 11H1 (a) and (b), respectively. Also, current Item 7D(6) will be renumbered as proposed Item 11F. Item 7D(6) currently requests information about whether the applicant or control affiliate's authorization to act as an attorney or accountant has been revoked or suspended. New Item 11F will add federal contractor licenses to this question. In addition, information requested in current Item 7F, relating to whether a foreign government, court, regulatory agency, or exchange has ever entered an order against the applicant or control affiliate related to investments or fraud not previously reported in other Item 7 questions, has been incorporated into other questions in proposed Item 11. Finally, current Items 7H, 7I, and 7J are proposed as Items 11J, 11K, and 11I, respectively.

[10] *See* Testimony of Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, Concerning H.R. 3447 and Related Functional Regulation Issues, Before the Subcommittee on Telecommunications and Finance Committee on Energy and Commerce, U.S. House of Representatives, April 14, 1994.

[11] Presently, banks can structure their securities sales operations in a number of different ways. First, banks may engage directly in selling activities, outside the regulatory framework established for broker-dealers under the federal securities laws. Second, banks may conduct sales activities through subsidiaries or affiliates registered with the Commission. Finally, banks may enter into contractual arrangements with unaffiliated broker-dealers (*i.e.*, ''networking'' or ''kiosk'' arrangements), whereby the registered broker-dealer sells securities and provides brokerage services to bank customers on (and off)

Continued

Commission, however, currently does not have the means to identify accurately broker-dealers affiliated with U.S. or foreign banks. Accordingly, in order to gather information that may be useful, for example, in evaluating the scope and nature of bank securities activities, and in conducting an effective inspection program of broker-dealers selling securities on behalf of banks, the amendments propose adding Item 10B. Proposed Item 10B will elicit information concerning all financial institutions or organizations, including bank holding companies, that control the applicant. Specifically, proposed Item 10B asks whether the applicant is controlled, directly or indirectly, by a bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings bank or association, credit union, or foreign bank. If the applicant answers in the affirmative, the applicant will be required to complete Section II of proposed Schedule D,[12] which requests general information about the financial institution, such as name, type (*e.g.*, bank holding company), and business address.

If the proposed amendments to Form BD are adopted, the Commission proposes to delete these questions from Schedule I of Form X–17A–5, the FOCUS report.[13] Disclosure on Schedule I is required *only* at the end of each calendar year, and, unlike the redesigned CRD system, is incapable of being queried and sorted by special category.

In addition to identifying bank affiliated broker-dealers, the amendments propose adding Item 12Y(1), which is intended to elicit information concerning securities activities conducted on bank premises by third-party broker-dealers.[14] Specifically, proposed Item 12Y(1) will require an applicant to indicate whether it is involved (or will be involved) in any networking, kiosk, or similar arrangement with a bank, savings bank or association, or credit union.

C. Broker-Dealer Arrangements

The Commission is proposing revisions to Item 8 in order to simplify and clarify the question. Item 8A currently asks, in pertinent part, ''does applicant have any arrangements with any other person, firm or organization under which: (1) any of the accounts or records of applicant are kept or maintained by such person, firm or organization; or (2) the funds or securities of applicant or any of its customers are held or maintained by such other person, firm or organization.'' Under the proposed amendments, current Items 8A (1) and (2) will be revised and separated out as Items 8A, 8B, and 8C. Item 8A will continue to inquire about arrangements to maintain books and records. Items 8B and C will ask about arrangements to maintain the accounts, funds, or securities of the *applicant*, and the accounts, funds, or securities of *customers* of the applicant, respectively.[15]

While Item 8 contains a question that asks whether the applicant is an introducing broker-dealer, it currently does not contain the same question about clearing broker-dealers. Information about clearing broker-dealers is important for regulatory purposes, including identifying clearing broker-dealers that will be responsible for paying certain transaction fees pursuant to Section 31 of the Exchange Act.[16] Accordingly, new Item 6 will be added to ask ''does applicant hold or maintain any funds or securities or provide clearing services for any other broker or dealer?'' [17]

D. Instructions

The Commission is proposing to add to the filing instructions of Form BD an ''Explanation of Terms,'' containing definitions of the following words: charged, order, felony, misdemeanor, found, minor rule violation, and enjoined.[18] The definitions contained in this section are intended to assist applicants in responding to disciplinary-related questions, and are consistent with the definitions recently proposed to be added to Form U–4 by NASAA.

III. Proposed Amendments to the Schedules to Form BD

A. Schedules A, B, and C—Direct and Indirect Ownership Disclosure

The proposed changes revise Schedules A, B, and C to elicit more relevant and accurate information concerning an applicant and its control affiliates. Schedules A, B, and C currently require applicants to disclose the identity of their executive officers, directors, partners, and direct and indirect owners.[19] In response to

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the bank's premises in exchange for a percentage of the commissions earned.

[12] *See* discussion *infra* part III.B.1.

[13] In Securities Exchange Act Release No. 31398 (Nov. 4, 1992), 57 FR 53261, the Commission adopted an amendment to Schedule I of Form X–17A–5 (the ''FOCUS'' report) to require registered broker-dealers to disclose their affiliations, if any, with U.S. banks. Broker-dealers already were required to disclose their affiliations with foreign banks.

[14] *See supra* note 11. Revised Item 12Y(2) also would ask whether the applicant has entered into a networking arrangement with an insurance company or agency. Insurance companies increasingly are selling securities without registering as broker-dealers under Section 15(a) of the Exchange Act through networking arrangements. New Item 12Y(2) is proposed to assist the Commission, SROs, and state securities regulators in conducting an effective examination program to ensure that broker-dealers involved in networking arrangements with an insurance company or agency are complying with the federal securities laws, including certain conditions set forth in staff no-action letters. *See, e.g.*, Letters regarding: *FIMCO Securities Group, Inc.* (July 16, 1993); *Delta First Financial* (Sept. 21, 1992); and *The Wolper Ross Corporation* (Oct. 16, 1991).

[15] These items also have been reorganized because accounts generally are associated with funds and securities, rather than with records.

[16] 15 U.S.C. § 78ee.

[17] Because a clearing broker-dealer may provide such services for multiple broker-dealers, details of clearing arrangements would not be required to be provided by the clearing broker-dealer on Schedule D.

[18] The proposed definitions are set out below:

Charged: Being accused of a crime in a formal complaint, information, or indictment (or equivalent formal charge).

Order: A written directive issued pursuant to statutory authority and procedures, including orders of denial, suspension, or revocation; does not include special stipulations, undertakings or agreements relating to payments, limitations on activity or other restrictions unless they are included in an order.

Felony: Includes a general court martial. For jurisdictions that do not differentiate between a felony or misdemeanor, a felony is an offense punishable by a sentence of at least one year imprisonment and/or a fine of at least $1,000.

Misdemeanor: Includes a special court martial. For jurisdictions that do not differentiate between a felony or misdemeanor, a misdemeanor is an offense punishable by a sentence of less than one year imprisonment and/or a fine of less than $1,000.

Found: Includes adverse final actions, including consent decrees in which the respondent has neither admitted nor denied the findings, but does not include agreements, deficiency letters, examination reports, memoranda of understanding, letters or caution, admonishments, and similar informal resolutions of matters. This term is discussed in Securities Exchange Act Release No. 22468 (Sept. 26, 1985), 50 FR 41867.

Minor Rule Violation: A violation of a self-regulatory organization rule that has been designated as ''minor'' pursuant to a plan approved by the U.S Securities and Exchange Commission. A rule violation may be designated as ''minor'' under a plan if the sanction imposed consists of a fine of $2,500 or less, and if the sanctioned person does not contest the fine. This term is discussed in Securities Exchange Act Release No. 30958 (July 27, 1992), 57 FR 34028.

Enjoined: Includes being subject to a mandatory injunction, prohibitory injunction, preliminary injunction, or a temporary restraining order.

In addition, the proposed amendments move current definitions, such as control affiliate, investment or investment-related, foreign financial regulatory authority, and proceeding to the section containing the proposed ''Explanation of Terms.''

[19] Schedule A currently requires disclosure of all five percent owners. Schedule B requires disclosure of all twenty-five percent owners of direct owners, their twenty-five percent owners, and each successive twenty-five percent owner of a twenty-five percent owner, continuing up the chain of ownership until a reporting company is reached. Similar provisions apply to limited partners that

heightened interest in national treatment of foreign international markets, including foreign ownership of U.S. broker-dealers,[20] the Commission is proposing to collect on Schedules A, B, and C information concerning foreign ownership of U.S. broker-dealers.

In some instances, because of their complex organizational structures, U.S. applicants may not know or may not be able to obtain detailed information regarding remote foreign owners. Accordingly, rather than require applicants to provide on Schedule D detailed information concerning their foreign owners, which may be unavailable to the applicant, the Commission is proposing to require only that the applicant check a box on Schedules A and B to indicate if an owner is a domestic entity, an entity incorporated or domiciled in a foreign country, or an individual.

B. Other Schedules

1. Schedule D—Miscellaneous Disclosure

The proposed amendments restructure the contents and increase the specificity of the information required to be reported on Schedule D, which currently requires disclosure of details relating to Items 1C(2), 5, 7, 8, 9, 10, 12Z, and 13B. Descriptions of events resulting in an affirmative answer to these Form items currently are set forth in free form, non-structured text in Schedule D.[21] In order to organize this information into a format useful for electronic filing and retrieving, Schedule D will be revised to add separate sections for each Form item that requires applicants to disclose details of an event or occurrence. For example, an applicant providing an affirmative answer to Items 7 and 8, relating to introducing and clearing arrangements, will be required to complete Section IV of proposed Schedule D. Section IV will require the applicant to include the clearing or custodial entity's name, business address, CRD number (if applicable), and the effective and termination date of the arrangement.

2. Schedule E—Branch Office Disclosure

The proposed amendments would add two new items to Schedule E, which requires applicants to disclose information regarding all business locations apart from the applicant's main office, including the location and name of the supervisor of each branch office, and any closing or opening of an office. The Commission is proposing amendments to Schedule E that are designed to elicit information concerning branch offices and other business locations that are considered by the broker-dealer to be franchised[22] or that employ a significant number of independent contractors engaging in securities activities.[23] The use of franchised branch offices or large numbers of independent contractors raises concerns that such offices may not be properly supervised and may be operating outside the scope of federal and state securities laws.[24] By identifying and monitoring so-called franchised branch offices through disclosure in Schedule E, the Commission and the SROs' examination and enforcement functions will be enhanced.

Accordingly, the proposed amendment to Item 10 in Schedule E will ask if a business location will operate pursuant to a written agreement or contract (other than an insurance agency agreement)[25] with the main office, and the location: (a) assumes liability for its own expenses or has its expenses paid by a party other than the applicant; (b) has primary responsibility for decisions relating to the employment and remuneration of its registered representatives; (c) deems 5% or more of its total registered representatives to be ''independent contractors'' for tax purposes; or (d) engages in separate market making and/or underwriting activities.

In addition, the amendments to Schedule E propose revisions to Item 5, which will require an applicant to provide the name of the financial institution if the branch office or other business location occupies or shares space within a bank, savings bank or association, or credit union.

IV. Other Proposed Amendments

In addition to the substantive amendments to Form BD discussed above, the Commission is proposing several technical amendments to the Form. Item 1 will be revised to expressly inform applicants that branch offices and other business locations from which an applicant may be conducting business must be reported on Schedule E. Also, current Items 12 and 13, concerning government securities activities, will become a subset of SEC registration under Item 2.[26] In addition, the proposed

have contributed twenty-five percent or more of a partnership's capital. Schedule C is used to amend Schedules A and B.

[20] For example, the Treasury Department, with the assistance of the Commission, prepares, on a periodic basis, a study for Congress entitled the *National Treatment Study: Report to Congress on Foreign Government Treatment of U.S. Commercial Banking and Securities Organizations* (Nov. 30, 1990) (''National Treatment Study''). This report is required to include information about foreign ownership of U.S. broker-dealers.

In recent years, a growing number of broker-dealers with foreign owners have applied for registration in the United States. In 1990, foreign persons had equity interests of 25 percent or more in approximately 130 registered broker-dealers. See National Treatment Study at 86.

[21] For example, details regarding a succession reported under Item 5 must be disclosed on Schedule D.

[22] Typically, in a franchise arrangement, the registered broker-dealer allows the franchised office to use its broker-dealer registration and its name to conduct a securities business in return for a percentage of the commissions and fees generated from the securities transactions executed by the franchised office. The registered broker-dealer generally is not responsible under the agreement for paying any of the operating expenses of the franchised office, including licensing fees for registered representatives.

[23] The designation of registered representatives as independent contractors has no effect on a broker-dealer's responsibilities under the federal securities laws, including Section 15(b) of the Exchange Act [15 U.S.C. § 78o(b)]. *See, e.g., Letter regarding Titan Capital Corporation* (Sept. 30, 1988); and *Hollinger* v. *Titan Capital Corp.*, 914 F.2d 1564, 1572–76 (9th Cir. 1990), *cert. denied,* 111 S.Ct. 1621 (1991).

[24] Section 15(a) of the Exchange Act provides that it is unlawful for a broker or dealer that is a person other than a natural person to use the means of interstate commerce to effect transactions in securities, unless such broker or dealer is registered in accordance with Section 15(b) of the Exchange Act, or unless an exemption applies. The registration requirements of Section 15(a)(1) of the Exchange Act apply only to brokerage firms or natural persons not associated with a brokerage firm. Natural persons associated with a broker-dealer are not required to register separately as broker-dealers.

Section 3(a)(18) of the Exchange Act defines ''associated person of a broker or dealer'' in relevant part to mean ''any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer.'' Thus, under a franchised branch office arrangement, where the branch manager and registered representatives are not subject to the supervisory control of the registered broker-dealer, they are not associated persons of such broker-dealer, and accordingly the franchised branch office would be required to register separately as a broker-dealer. *See Roth* v. *Securities and Exchange Commission,* 22 F.3d 1108 (D.C. Cir. 1994), Fed.Sec. L. Rep. ¶98,206, *cert. denied,* 115 S.Ct. 575 (1994) (upholding the Commission's interpretation of Section 15(a) of the Exchange Act that the exclusion from registration for associated persons of a broker-dealer only applies to the extent associated persons act within the scope of their employment with a registered broker-dealer and are subject to supervisory control of such broker-dealer).

[25] Proposed Item 12Y(2) relates to securities activities of broker-dealers that have networking arrangements with an insurance company or agency. *See supra* note 14. The Commission requests comment on whether insurance agency agreements should be required to be disclosed in proposed Item 10 of Schedule E.

[26] Proposed changes to Item 2 also remove the instruction ''if any registration, license, or membership listed is of a restricted nature, explain fully on Schedule D.'' The redesigned CRD system will allow the Commission, SROs, and states to enter directly in the CRD system any restrictions placed on an applicant's securities business.

amendments renumber Item 3 as Items 3A and 3B. Proposed Item 3A adds limited liability companies as a choice of legal form of organization the applicant may select. The proposed changes move successor identification and effective date of succession information currently in Item 5 to Schedule D. Finally, the amendments propose clarifying changes to Item 6B, which requests disclosures of control persons of the applicant.[27]

V. Request for Comment

The Commission is soliciting comment on whether the changes to Form BD described above will provide more meaningful information to the Commission and other securities regulators without increasing the regulatory burden on broker-dealers. The Commission further requests comment on each of the changes to the Form. In particular, the Commission request comment on whether the disclosure of bankruptcy proceedings should be limited to ten years or some other period of time, and whether proposed Item 10B (relating to bank affiliations) covers the universe of bank-affiliated broker-dealers. The Commission also requests comment on the definition of franchise office in Schedule E. Electronic filing of Form U–4 currently is in the planning stages and the Commission expects that, upon completion of the redesign, the CRD system also will have the capability of accepting electronic filing of Form BD. Thus, the system, when implemented, contemplates full electronic filing of Form U–4 and Form BD. As noted above, the NASD will ensure that all broker-dealers will have full access to electronic filing facilities.[28] The Commission therefore requests comment on the feasibility of electronic filing of Form BD, and in particular, whether electronic filing should be mandatory.

VI. Effective Date

The Commission anticipates that the proposed amendments to Form BD will not become effective until the redesigned CRD system is fully operational. The NASD, which will convert existing information to a new format conforming to the redesigned CRD system, currently anticipates that the initial phase of the redesigned CRD system will become operational in early 1996. Details on how to file revised Form BD, if adopted, will be determined when the CRD redesign is closer to completion.

VII. Effects on Competition and Regulatory Flexibility Act Considerations

Sections 23(a)(2) of the Exchange Act[29] requires the Commission, in adopting rules under the Exchange Act, to consider the anticompetitive effects of such rules, if any, and to balance any anticompetitive impact against the regulatory benefits gained in terms of furthering the purpose of the Exchange Act. The Commission is preliminarily of the view that the proposed amendments to Form BD would not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Commission requests comment, however, on any competitive burdens that might result from adoption of the form revisions described in this release.

In addition, the Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA''), pursuant to the requirements of the Regulatory Flexibility Act,[30] regarding the proposed revisions to Form BD. The IRFA indicates that the proposed revisions are intended to respond to design updates to the CRD system by expanding it to serve as an information resource allowing securities regulators to run reports and retrieve information through searches by subject category, and by enabling registrants to file Form BD electronically with the CRD system. Thus, adoption of the proposed revisions to Form BD not only will provide benefits to securities regulators in the retrieval of information, but also will ease the burden of registration by future registrants. The IRFA also indicates that the proposed revisions to Form BD will decrease the cost and lessen the time required to register for small broker-dealers that do not have an extensive disciplinary history.

In addition, the IRFA indicates the proposed revisions ultimately could impose an additional one-time reporting requirement on broker-dealers. The burden of this one-time reporting requirement, however, will fall only on those broker-dealers that have an extensive disciplinary history. Finally, because the proposed amendments generally are intended to lessen the burden of registration, the IRFA further indicates that small broker-dealers will be affected in the same manner as other registrants. Thus, exempting small broker-dealers from Form BD disclosures will be unwarranted.

A copy of the IRFA may be obtained from Terry R. Young, Attorney, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 7–10, Washington, D.C. 20549, (202) 942–0073.

VIII. Statutory Basis

15 U.S.C. §§ 78*o*, 78q, 78w.

List of Subjects in 17 CFR Part 249

Reporting and recordkeeping requirements, Securities, Broker-Dealers.

For the reasons set out in the preamble, the commission is proposing to amend Title 17, Chapter II, Part 249 of the Code of Federal Regulations as follows:

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

2. By revising Form BD (referenced in § 249.501) to read as set forth below:

Note: Form BD does not and the revision will not appear in the Code of Federal Regulations. The proposed revised Form BD is attached as Appendix I to this document.

3. By amending Schedule I to Form X–17A–5 (referenced in § 249.617) by removing Specific Instructions 19a, b & c and Question 19, redesignating Questions 20 through 24 as Questions 19 through 23, and revising newly designated Question 19 to read as follows:

Form X–17A–5

* * * * *

Schedule I

* * * * *

19. Respondent is an affiliate or subsidiary of a foreign broker-dealer.

By the Commission.

Dated: January 12, 1995.

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 8010–01–P

[27] The amendments propose to renumber current Item 6B as Item 9B and make explicit that disclosure of financing through public offerings, credit obtained in the ordinary course of business, or a satisfactory subordination agreement, as defined under Rule 15c3–1 of the Exchange Act [17 CFR 240.15c3–1], is unnecessary.

[28] The NASD will provide access to electronic filing through terminals and other means. *See supra* note 4 and accompanying text.

[29] 15 U.S.C. § 78w(a)(2).

[30] 5 U.S.C. § 603 (1990).

INSTRUCTIONS FOR FORM BD Appendix I
* (Paper filings only)

1. **Updating** -- By law, the applicant must update the Form BD information by submitting amendments whenever the information on file becomes inaccurate or incomplete for any reason. Complete all amended pages in full and, except for Schedule C, circle the number of the item being changed.

2. **Contact Employee** -- The individual listed on page 1 as the contact employee must be authorized to receive all compliance information, communications, and mailings and be responsible for disseminating it within the applicant's organization.

3. **Format**

   - o Attach an Execution Page (Page 1) with original manual signatures to the initial Form BD filing and each amendment to the form. Amendments to Schedules C, D and the DRPs also must be accompanied by an Execution Page (Page 1). Schedules A & B are amended by filing Schedule C.

   - o Type all information.

   - o Give the name of the broker-dealer and date on each page.

   - o Use only the current version of Form BD and its Schedules or a reproduction of them.

4. **Schedules A, B and C** -- File Schedules A and B only with initial applications for registration. Use Schedule C to update Schedules A and B. Individuals not required to file a Form U-4 (individual registration) with the Central Registration Depository (CRD) who are listed on Schedules A, B, or C must attach page 2 of Form U-4. The applicant broker-dealer must be listed in Form U-4 Item 20A or 20B. Signatures are not required.

5. **Schedule D** -- Schedule D provides additional space for explaining answers to Item 1.C.(2) , and "yes" answers to Items 5, 7, 8, 9, 10, 12, and 13 to Form BD, but not for continuing Schedules A, B or C. To continue Schedules A, B or C, use copies of the Schedule being continued.

6. **Disclosure Reporting Page (DRP)** -- All information relating to an event reportable under Item 11 must be provided on the appropriate DRP (BD). Applicant may submit a partially completed DRP (BD) (as specified in the DRP) only if the applicant or control affiliate for whom the DRP (BD) is being filed has submitted a fully completed DRP (BD) (in connection with another Form BD filing) or a DRP (U-4) (in connection with a Form U-4 filing) relating to the occurrence of the same event to the Central Registration Depository (CRD) system of the NASD. In such cases, this fully completed DRP (BD) or DRP (U-4) must be attached to the applicant's DRP (BD).

7. **Schedule E** -- Branch offices or other business locations must be reported on Schedule E. Schedule E amendments may be submitted without an execution page.

8. **Government Securities Activities**

   A. Broker-dealers registered or applicants applying for registration under Section 15(b) or 15B of the Exchange Act that conduct (or intend to conduct) a government securities business in addition to other broker-dealer activities (if any) must file a notice on Form BD by answering "yes" to Item 2.B.

   B. Section 15C of the Securities Exchange Act of 1934 requires sole government securities broker-dealers to register with the SEC. To do so, use Form BD and answer "yes" to Item 2.C. if conducting only a government securities business.

   C. Broker-dealers registered under Section 15(b) or 15B of the Exchange Act that cease to conduct a government securities business must file notice when ceasing their activities in government securities. To do so, file an amendment to Form BD and answer "yes" to Item 2.D.

   Note: Broker-dealers registered under Section 15C may register under Section 15(b) by filing an amendment to Form BD and answering "yes" to Items 2.A and 2.D. By doing so, applicant expressly consents to withdrawal of applicant's registration under 15C of the Exchange Act.

9. **Federal Information Law and Requirements** -- The Securities Exchange Act of 1934, Sections 15, 15C, 17(a) and 23(a), authorize the SEC to collect the information on this form from applicants for registration as a broker or dealer (and persons associated with applicants). The information is used for regulatory purposes, including deciding whether to grant registration. The SEC maintains files of the information on this form and makes it publicly available. Only the Social Security Number information, which aids in identifying the applicant, is voluntary.

* Instructions for electronic filings will be incorporated as soon as the CRD system is fully redesigned.

EXPLANATION OF TERMS

1. GENERAL

- Applicant -- The broker-dealer applying on or amending this form.
- Control -- The power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that (i) is a director, general partner or officer exercising executive responsibility (or having similar status or functions); (ii) directly or indirectly has the right to vote 25% or more of a class of a voting security or has the power to sell or direct the sale of 25% or more of a class of voting securities; or (iii) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 25% or more of the capital, is presumed to control that company. (This definition is used solely for the purpose of Form BD.)
- Jurisdiction -- A state, the District of Columbia, the Commonwealth of Puerto Rico, or any subdivision or non-federal government regulatory body thereof.
- Person -- An individual, partnership, corporation, trust, or other organization.
- Self-regulatory organization -- Any national securities or commodities exchange or registered securities association, or registered clearing agency.

2. FOR PURPOSES OF ITEM 11 AND THE CORRESPONDING DISCLOSURE REPORTING PAGE (DRP)

- Control affiliate -- A person named in Items 1.A., 9. or in Schedules A, B or C as control persons or any other individual or organization that directly or indirectly controls, is under common control with, or is controlled by, the applicant, including any current employee except one performing only clerical, administrative, support or similar functions, or who, regardless of title, perform no executive duties or have no senior policy making authority.
- Investment or investment-related -- Pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, issuer, municipal securities dealer, government securities broker or dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association).
- Involved -- Doing an act or aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.
- Foreign financial regulatory authority -- Includes (1) a foreign securities authority; (2) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of investment or investment-related activities; and (3) a membership organization, a function of which is to regulate the participation of its members in the activities listed above.
- Proceeding -- Includes a formal administrative or civil action initiated by a governmental agency, self-regulatory organization or foreign financial regulatory authority, a felony criminal indictment or information (or equivalent formal charge), or a misdemeanor criminal information (or equivalent formal charge). Does not include other civil litigation, investigations, or arrests or similar charges effected in the absence of a formal criminal indictment or information (or equivalent formal charge).
- Charged -- Being accused of a crime in a formal complaint, information, or indictment (or equivalent formal charge).
- Order -- A written directive issued pursuant to statutory authority and procedures, including orders of denial, suspension, or revocation; does not include special stipulations, undertakings or agreements relating to payments, limitations on activity or other restrictions unless they are included in an order.
- Felony -- Includes a general court martial. For jurisdictions that do not differentiate between a felony or misdemeanor, a felony is an offense punishable by a sentence of at least one year imprisonment and/or a fine of at least $1,000.
- Misdemeanor -- Includes a special court martial. For jurisdictions that do not differentiate between a felony or misdemeanor, a misdemeanor is an offense punishable by a sentence of less than one year imprisonment and/or a fine of less than $1,000.
- Found -- Includes adverse final actions, including consent decrees in which the respondent has neither admitted nor denied the findings, but does not include agreements, deficiency letters, examination reports, memoranda of understanding, letters of caution, admonishments, and similar informal resolutions of matters.
- Minor Rule Violation -- A violation of a self-regulatory organization rule that has been designated as "minor" pursuant to a plan approved by the U.S. Securities and Exchange Commission. A rule violation may be designated as "minor" under a plan if the sanction imposed consists of a fine of $2,500 or less, and if the sanctioned person does not contest the fine. (Check with the appropriate self-regulatory organization to determine if a particular rule violation has been designated as "minor" for these purposes).
- Enjoined -- Includes being subject to a mandatory injunction, prohibitory injunction, preliminary injunction, or a temporary restraining order.

FORM BD **PAGE 1** (Execution Page) (REV. 11/94)	**UNIFORM APPLICATION FOR BROKER-DEALER REGISTRATION** Date: _____ SEC File No.: 8- _____ Firm CRD No.: _____	OFFICIAL USE	OFFICIAL USE ONLY

WARNING: Failure to keep this form current and to file accurate supplementary information on a timely basis, or the failure to keep accurate books and records or otherwise to comply with the provisions of law applying to the conduct of business as a broker-dealer would violate the Federal securities laws and the laws of the jurisdictions and may result in disciplinary, administrative, injunctive or criminal action.

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

☐ APPLICATION ☐ AMENDMENT

1. Exact name, principal business address, mailing address, if different, and telephone number of applicant:
   A. Full name of applicant (if sole proprietor, state last, first and middle name):
   _____
   B. IRS Empl. Ident. No.:
   _____
   C. (1) Name under which broker-dealer business primarily is conducted, if different from Item 1A.
   _____
   (2) List on Schedule D Page 1 any other name by which the firm conducts business and where it is used.
   D. If this filing makes a name change on behalf of the applicant, enter the previous name and specify whether the name change is of the; ☐ applicant name (1A) or ☐ business name (1C):
   (Please check above.) _____
   E. Firm main address: (Do not use a P.O. Box)
   _____
   (Number and Street) (City) (State/Country) (Zip+4/Postal Code)
   Branch offices or other business locations must be reported on Schedule E.
   F. Mailing address, if different:
   _____
   G. Business Telephone Number:
   _____ _____
   (Area Code) (Telephone Number)
   H. Contact Employee:
   _____ _____ _____
   (Name and Title) (Area Code) (Telephone Number)

EXECUTION:

For the purposes of complying with the laws of the State(s) designated in Item 2 relating to either the offer or sale of securities or commodities, the undersigned and applicant hereby certify that the applicant is in compliance with applicable state surety bonding requirements and irrevocably appoint the administrator of each of those State(s) or such other person designated by law, and the successors in such office, attorney for the applicant in said State(s) upon whom may be served any notice, process, or pleading in any action or proceeding against the applicant arising out of or in connection with the offer or sale of securities or commodities, or out of the violation or alleged violation of the laws of those State(s), and the applicant hereby consents that any such action or proceeding against the applicant may be commenced in any court of competent jurisdiction and proper venue within said State(s) by service of process upon said appointee with the same effect as if applicant were a resident in said State(s) and had lawfully been served with process in said State(s).

The applicant consents that service of any civil action brought by or notice of any proceeding before the Securities and Exchange Commission or any self-regulatory organization in connection with the applicant's broker-dealer activities, or of any application for a protective decree filed by the Securities Investor Protection Corporation, may be given by registered or certified mail or confirmed telegram to the applicant's contact employee at the main address, or mailing address if different, given in Items 1E and 1F.

The undersigned, being first duly sworn, deposes and says that he/she has executed this form on behalf of, and with the authority of, said applicant. The undersigned and applicant represent that the information and statements contained herein, including exhibits attached hereto, and other information filed herewith, all of which are made a part hereof, are current, true and complete. The undersigned and applicant further represent that to the extent any information previously submitted is not amended such information is currently accurate and complete.

_____ _____
Date Name of Applicant

By: _____ _____
Signature and Title Print Name

Subscribed and sworn before me this _____ day of _____, _____ by _____
Year Notary Public

My Commission expires _____ County of _____ State of _____

This page must always be completed in full with original, manual signature and notarization. To amend, circle items being amended. Affix notary stamp or seal where applicable.

DO NOT WRITE BELOW THIS LINE – FOR OFFICIAL USE ONLY

FORM BD | Applicant Name: _____ | OFFICIAL USE

PAGE 2 | Date: _____ | Firm CRD No.: _____

2. Indicate by checking the appropriate box(es) each governmental authority, organization, or jurisdiction in which the applicant is registered or registering as a broker-dealer.

SEC

☐ SECURITIES AND EXCHANGE COMMISSION

If you have checked the SEC box, please answer Items 2.A through 2.D below.

	YES	NO
2.A Is applicant registered or registering as a broker-dealer under Section 15(b) or Section 15B of the Securities Exchange Act of 1934?	☐	☐
2.B Is applicant registered or registering as a broker-dealer under Section 15(b) or Section 15B of the Securities Exchange Act of 1934 and also acting or intending to act as a government securities broker or dealer?	☐	☐
2.C Is applicant registered or registering solely as a government securities broker or dealer under Section 15C of the Securities Exchange Act of 1934? (Do not answer "Yes" to 2.C if applicant answered "Yes" to Item 2.A or Item 2.B)	☐	☐
2.D Is applicant ceasing its activities as a government securities broker or dealer? (If applicant answers "Yes" to Item 2.A and 2.D, applicant expressly consents to the withdrawal of applicant's registration as a government securities broker or dealer under Section 15C of the Securities Exchange Act of 1934. See "Instructions".)	☐	☐

SRO

☐ ASE ☐ BSE ☐ CBOE ☐ CHX ☐ CSE ☐ NASD ☐ NYSE ☐ PHLX ☐ PSE ☐ OTHER (specify) _____

JURISDICTION

☐ Alabama	☐ Hawaii	☐ Michigan	☐ North Carolina	☐ Texas
☐ Alaska	☐ Idaho	☐ Minnesota	☐ North Dakota	☐ Utah
☐ Arizona	☐ Illinois	☐ Mississippi	☐ Ohio	☐ Vermont
☐ Arkansas	☐ Indiana	☐ Missouri	☐ Oklahoma	☐ Virginia
☐ California	☐ Iowa	☐ Montana	☐ Oregon	☐ Washington
☐ Colorado	☐ Kansas	☐ Nebraska	☐ Pennsylvania	☐ West Virginia
☐ Connecticut	☐ Kentucky	☐ Nevada	☐ Puerto Rico	☐ Wisconsin
☐ Delaware	☐ Louisiana	☐ New Hampshire	☐ Rhode Island	☐ Wyoming
☐ District of Columbia	☐ Maine	☐ New Jersey	☐ South Carolina	
☐ Florida	☐ Maryland	☐ New Mexico	☐ South Dakota	
☐ Georgia	☐ Massachusetts	☐ New York	☐ Tennessee	

3. A. Indicate legal status of applicant:

☐ Corporation ☐ Sole Proprietorship ☐ Other (specify) _____

☐ Partnership ☐ Limited Liability Company

B. Indicate date and place applicant obtained its legal status (i.e., state or country where incorporated, where partnership agreement was filed, or where applicant entity was formed):

State/Country of formation: _____ Date of formation: _____ (MM/DD/YYYY) Applicant's fiscal year ends: _____ (MM/DD)

(Schedule A and, if applicable, Schedule B must be completed as part of all initial applications. Amendments to these schedules must be provided on Schedule C.)

4. If applicant is a sole proprietor, state full residence address and Social Security Number.

Social Security Number: __ __ __ - __ __ - __ __ __ __

(Number and Street) (City) (State/Country) (Zip+4/Postal Code)

	YES	NO
5. Is applicant at the time of this filing succeeding to the business of a currently registered broker-dealer? *Do not report previous successions already reported on Form BD.* *(If "Yes", complete appropriate items on Schedule D.)*	☐	☐
6. Does applicant hold or maintain any funds or securities or provide clearing services for any other broker or dealer?	☐	☐
7. Does applicant refer or introduce customers to any other broker or dealer? *(If "Yes", complete appropriate items on Schedule D.)*	☐	☐
8. Does applicant have any arrangement with any other person, firm, or organization under which:		
A. any books or records of applicant are kept or maintained by such other person, firm or organization?	☐	☐
B. accounts, funds, or securities of the applicant are held or maintained by such other person, firm, or organization?	☐	☐
C. accounts, funds, or securities of customers of the applicant are held or maintained by such other person, firm or organization?	☐	☐

For purposes of 8.B. and 8.C., do not include a bank or satisfactory control location as defined in paragraph (c) of Rule 15c3-3 under the Securities Exchange Act of 1934, (17 CFR 240.15c3-3.)

15c3-3 under the Securities Exchange Act of 1934, (17 CFR 240.15c3-3.)

FORM BD PAGE 3 (REV. 11/94)	Applicant Name: _____ Date: _____ Firm CRD No.: _____	OFFICIAL USE	OFFICIAL USE ONLY

		YES	NO
9.	Does any person not named in Item 1 or Schedules A, B, or C, directly or indirectly:		
	A. control the management or policies of the applicant through agreement or otherwise?	☐	☐
	B. wholly or partially finance the business of applicant?	☐	☐
	Do not answer "yes" to 9B if the person finances the business of the applicant through: 1) a public offering of securities made pursuant to the Securities Act of 1933; 2) credit extended in the ordinary course of business by suppliers, banks, and others; or 3) a satisfactory subordination agreement, as defined in Rule 15c3-1 under the Securities Exchange Act of 1934 (17 CFR 240.15c3-1).		
	(If "Yes" to any part of Item 9, complete appropriate items on Schedule D.)		
10. A.	Directly or indirectly, does applicant control, is applicant controlled by, or is applicant under common control with, any partnership, corporation, or other organization that is engaged in the securities or investment advisory business?	☐	☐
B.	Directly or indirectly, is applicant controlled by any bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings bank or association, credit union, or foreign bank?	☐	☐
	Do not answer "yes" to 10C if you have previously reported a foreign organization under Item 10A or Item 10B.		
	(If "Yes" to any part of Item 10, complete appropriate items on Schedule D.)		
11.	Use the appropriate DRP for providing details to "yes" answers to the questions in Item 11. Refer to "Instructions" and "Explanation of Terms" for definitions.		
CRIMINAL DISCLOSURE	A. In the past ten years has the applicant or a control affiliate:		
	(1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to any felony?	☐	☐
	(2) been charged with any felony?	☐	☐
	B. In the past ten years has the applicant or a control affiliate:		
	(1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to a misdemeanor involving: investments or an investment-related business, or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?	☐	☐
	(2) been charged with a misdemeanor specified in 11B(1)?	☐	☐
REGULATORY ACTION DISCLOSURE	C. Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:		
	(1) found the applicant or a control affiliate to have made a false statement or omission?	☐	☐
	(2) found the applicant or a control affiliate to have been involved in a violation of its regulations or statutes?	☐	☐
	(3) found the applicant or a control affiliate to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted?	☐	☐
	(4) entered an order against the applicant or a control affiliate in connection with investment-related activity?	☐	☐
	(5) imposed a civil money penalty on the applicant or a control affiliate, or ordered the applicant or a control affiliate to cease and desist from any activity?	☐	☐

FORM BD
PAGE 4
(REV. 11/94)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE | OFFICIAL USE ONLY

	YES	NO
REGULATORY ACTION DISCLOSURE		
D. Has any other federal regulatory agency, any state regulatory agency, or foreign financial regulatory authority:		
(1) ever found the applicant or a control affiliate to have made a false statement or omission or been dishonest, unfair, or unethical?	☐	☐
(2) ever found the applicant or a control affiliate to have been involved in a violation of investment-related regulations or statutes?	☐	☐
(3) ever found the applicant or a control affiliate to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted?	☐	☐
(4) in the past ten years, entered an order against the applicant or a control affiliate in connection with an investment-related activity?	☐	☐
(5) ever denied, suspended, or revoked the applicant's or a control affiliate's registration or license or otherwise, by order, prevented it from associating with an investment-related business or restricted its activities?	☐	☐
E. Has any self-regulatory organization or commodities exchange ever:		
(1) found the applicant or a control affiliate to have made a false statement or omission?	☐	☐
(2) found the applicant or a control affiliate to have been involved in a violation of its rules (other than a violation designated a "minor rule violation" under a plan approved by the U.S. Securities and Exchange Commission)?	☐	☐
(3) found the applicant or a control affiliate to have been the cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted?	☐	☐
(4) disciplined the applicant or a control affiliate by expelling or suspending it from membership, barring or suspending its association with other members, or otherwise restricting its activities?	☐	☐
F. Has the applicant's or a control affiliate's authorization to act as an attorney, accountant, or federal contractor ever been revoked or suspended?	☐	☐
G. Is the applicant or a control affiliate now the subject of any regulatory proceeding that could result in a "yes" answer to any part of 11C, D, or E?	☐	☐
CIVIL JUDICIAL DISCLOSURE		
H. (1) Has any domestic or foreign court:		
(a) in the past ten years, enjoined the applicant or a control affiliate in connection with any investment-related activity?	☐	☐
(b) ever found that the applicant or a control affiliate was involved in a violation of investment-related statutes or regulations?	☐	☐
(c) ever dismissed, pursuant to a settlement agreement, an investment-related civil action brought against the applicant or control affiliate by a state or foreign financial regulatory authority?	☐	☐
(2) Is the applicant or a control affiliate now the subject of any civil proceeding that could result in a "yes" answer to any part of 11H(1)?	☐	☐
FINANCIAL DISCLOSURE		
I. In the past ten years has the applicant or a control affiliate of the applicant ever been a securities firm or a control affiliate of a securities firm that:		
(1) has been the subject of a bankruptcy petition?	☐	☐
(2) has had a trustee appointed or a direct payment procedure initiated under the Securities Investor Protection Act?	☐	☐
J. Has a bonding company ever denied, paid out on, or revoked a bond for the applicant?	☐	☐
K. Does the applicant have any unsatisfied judgments or liens against it?	☐	☐

FORM BD
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(REV. 11/94)

Applicant Name: _____
Date: _____ Firm CRD No.: _____

OFFICIAL USE | OFFICIAL USE ONLY

12. Check types of business engaged in (or to be engaged in, if not yet active) by applicant. Do not check any category that accounts for (or is expected to account for) less than 1% of annual revenue from the securities or investment advisory business.

A. Exchange member engaged in exchange commission business other than floor activities	☐ EMC
B. Exchange member engaged in floor activities	☐ EMF
C. Broker or dealer making inter-dealer markets in corporate securities over-the-counter	☐ IDM
D. Broker or dealer retailing corporate equity securities over-the-counter	☐ BDR
E. Broker or dealer selling corporate debt securities	☐ BDD
F. Underwriter or selling group participant (corporate securities other than mutual funds)	☐ USG
G. Mutual fund underwriter or sponsor	☐ MFU
H. Mutual fund retailer	☐ MFR
I. 1. U.S. government securities dealer	☐ GSD
2. U.S. government securities broker	☐ GSB
J. Municipal securities dealer	☐ MSD
K. Municipal securities broker	☐ MSB
L. Broker or dealer selling variable life insurance or annuities	☐ VLA
M. Solicitor of time deposits in a financial institution	☐ SSL
N. Real estate syndicator	☐ RES
O. Broker or dealer selling oil and gas interests	☐ OGI
P. Put and call broker or dealer or option writer	☐ PCB
Q. Broker or dealer selling securities of only one issuer or associate issuers (other than mutual funds)	☐ BIA
R. Broker or dealer selling securities of non-profit organizations (e.g., churches, hospitals)	☐ NPB
S. Investment advisory services	☐ IAD
T. 1. Broker or dealer selling tax shelters or limited partnerships in primary distributions	☐ TAP
2. Broker or dealer selling tax shelters or limited partnerships in the secondary market	☐ TAS
U. Non-exchange member arranging for transactions in listed securities by exchange member	☐ NEX
V. Trading securities for own account	☐ TRA
W. Private placements of securities	☐ PLA
X. Broker or dealer selling interests in mortgages or other receivables	☐ MRI
Y. Broker or dealer involved in a networking, kiosk or similar arrangement with a:	
1. bank, savings bank or association, or credit union	☐ BNA
2. insurance company or agency	☐ INA
Z. Other (give details on Schedule D)	☐ OTH

	YES	NO
13. A. Does applicant effect transactions in commodity futures, commodities or commodity options as a broker for others or as a dealer for its own account?	☐	☐
B. Does applicant engage in any other non-securities business? (If "yes", describe each other business briefly on Schedule D.)	☐	☐

CRIMINAL DISCLOSURE REPORTING PAGE (BD)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL *OR* ☐ AMENDED response used to report details for affirmative responses to *Items 11A or 11B* of Form BD;

Check ☑ item(s) being responded to:

11A In the past ten years has the applicant or a control affiliate:

- ☐ (1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any felony?
- ☐ (2) been charged with any felony?

11B In the past ten years has the applicant or a control affiliate:

- ☐ (1) been convicted or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to a misdemeanor involving: investments or an investment-related business, or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?
- ☐ (2) been charged with a misdemeanor specified in 11B(1)?

If the control affiliate is an individual registered through the CRD, complete only Part I. The control affiliate must submit details for this event on an appropriate DRP (U-4). If the control affiliate is not an individual registered through the CRD provide complete answers for appropriate items on this DRP. The completion of this DRP does not relieve the control affiliate of its obligation to update its CRD records. If more than one control affiliate, complete a separate DRP for each.

Multiple counts of the same charge arising out of the same event(s) should be reported on the same DRP. Unrelated criminal actions, including separate cases arising out of the same event, must be reported on separate DRPs. Use this DRP to report all charges arising out of the same event. One event may result in more than one affirmative answer to the above items.

Applicable court documents (i.e., criminal complaint, information or indictment as well as judgment of conviction or sentencing documents) must be provided to the CRD if not previously submitted.

PART I

NAME OF APPLICANT	APPLICANT CRD NUMBER

PART II

Name of Control Affiliate:	Is control affiliate in an investment-related business? ☐ Yes ☐ No	Control Affiliate's Title or Relationship:	CRD Number (if any):

1. Formal charge(s) were brought in:

Court: *(Name of Federal, Military, State or Foreign Court)*	Location of Court: *(City or County and State or Country)*	Docket / Case Number:

2. Charge Detail Disclosure: (Continue on additional Criminal Disclosure Reporting Page BD if more than three charges arise out of the same event.)

Chg #	Formal Charge(s) Description:	Number of Counts	Charge Type *(check one only)*		Plea *(check one only)*			Are Charge(s) Currently Pending?	Charge Date (MM/DD/YYYY)	Product Type (if charge is investment-related)
			Misdemeanor	Felony	Guilty	Not Guilty	Nolo Contendere			
1.								☐ Yes ☐ No		
2.								☐ Yes ☐ No		
3.								☐ Yes ☐ No		

3. Is action currently on appeal? ☐ Yes ☐ No	If Yes, date appeal was filed: MM / DD / YYYY

IF FINAL OR ON APPEAL, COMPLETE ITEMS 4 AND 5. FOR EACH CHARGE THAT IS PENDING, COMPLETE ONLY ITEM 5.

4. Disposition Detail Disclosure: (Continue on another Criminal Disclosure Reporting Page BD if more than three charges.)

Chg #	Disposition Type: (Conviction, Acquittal, Dismissal, Deferred Adjudication, Pre-Trial Intervention, etc.)	Disposition Date: (MM/DD/YYYY)	Disposition Detail: Sentence / Penalty (if applicable)	Duration: (if sentence, suspension, probation, etc.)	Start Date: (MM/DD/YYYY)	Penalty/Fine Amount: (if applicable)	Date Paid: (MM/DD/YYYY)
1.							
2.							
3.							

5. Provide a brief summary of circumstances leading to the charge(s) as well as the disposition. Include the relevant dates when the conduct which was the subject of the charge(s) occurred. (Use reverse side of this sheet for additional comments if necessary.)

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REGULATORY ACTION DISCLOSURE REPORTING PAGE (BD)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL *OR* ☐ AMENDED response used to report details for affirmative responses to *Item 11C, 11D, 11E, 11F or 11G* of Form BD;

Check the item(s) being responded to:

11C Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:
- ☐ (1) found the applicant or a control affiliate to have made a false statement or omission?
- ☐ (2) found the applicant or a control affiliate to have been involved in a violation of its regulations or statutes?
- ☐ (3) found the applicant or a control affiliate to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted?
- ☐ (4) entered an order against the applicant or a control affiliate in connection with investment-related activity?
- ☐ (5) imposed a civil money penalty on the applicant or a control affiliate, or ordered the applicant or a control affiliate to cease and desist from any activity?

11D Has any other federal regulatory agency, any state regulatory agency, or foreign financial regulatory authority:
- ☐ (1) ever found the applicant or a control affiliate to have made a false statement or omission or been dishonest, unfair, or unethical?
- ☐ (2) ever found the applicant or a control affiliate to have been involved in a violation of investment-related regulations or statutes?
- ☐ (3) ever found the applicant or a control affiliate to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted?
- ☐ (4) in the past ten years, entered an order against the applicant or a control affiliate in connection with an investment-related activity?
- ☐ (5) ever denied, suspended, or revoked the applicant's or a control affiliate's registration or license or otherwise, by order, prevented it from associating with an investment-related business or restricted its activities?

11E Has any self-regulatory organization or commodities exchange ever:
- ☐ (1) found the applicant or a control affiliate to have made a false statement or omission?
- ☐ (2) found the applicant or a control affiliate to have been involved in a violation of its rules (other than a violation designated a "minor rule violation" under a plan approved by the U.S. Securities and Exchange Commission)?
- ☐ (3) found the applicant or a control affiliate to have been the cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted?
- ☐ (4) disciplined the applicant or a control affiliate by expelling or suspending it from membership, barring or suspending its association with other members, or otherwise restricting its activities?

11F ☐ Has the applicant's or a control affiliate's authorization to act as an attorney, accountant, or federal contractor ever been revoked or suspended?

11G ☐ Is the applicant or a control affiliate now the subject of any regulatory proceeding that could result in a "yes" answer to any part of 11C, D, or E?

If the control affiliate is an individual registered through the CRD, complete only Part I. The control affiliate must submit details for this event on an appropriate DRP (U-4). If the control affiliate is not an individual registered through the CRD, provide complete answers for appropriate items on this DRP. The completion of this DRP does not relieve the control affiliate of its obligation to update its CRD records. If more than one control affiliate, complete a separate DRP for each.

One event may result in more than one affirmative answer within each of the above items. Use only one DRP to report details related to the same event. If an event gives rise to actions by more than one regulator, provide details to each action on a separate DRP.

PART I

NAME OF APPLICANT	APPLICANT CRD NUMBER
NAME OF CONTROL AFFILIATE (if applicable)	CONTROL AFFILIATE CRD NUMBER

PART II

1. Regulatory Action initiated by: *(Name the regulator, foreign financial regulatory authority, SRO or commodities exchange, etc.)* | 2. Regulatory Action Type:

3. Date Initiated: MM / DD / YYYY | 4. Docket / Case Number: | 5. Employing Firm when events occurred:

6. Product Type(s):

7. Describe the allegations related to this regulatory action: (Use reverse side of this sheet for additional comments if necessary.)

8. Is regulatory action currently: *(check one)* ☐ Pending ☐ On Appeal ☐ Final | 9. If on appeal, regulatory action appealed to: *(SEC, SRO, U.S. Court of Appeals, etc.)* | 10. If on appeal, date filed: MM / DD / YYYY

IF FINAL OR ON APPEAL, COMPLETE ALL ITEMS BELOW. FOR PENDING ACTIONS, COMPLETE ITEM 19 ONLY

11. How was the matter resolved? *(Settlement, Consent, etc.)* | 12. Resolution Date: MM / DD / YYYY | 13. Sanctions: *(Suspension, Censure, Bar, Requalification, etc.)*

14. If Suspended or Barred: ▶ | Is suspension/bar of a fixed duration? ☐ Yes ☐ No (If No, provide details in Item 19) | Suspension/Bar Start Date: MM / DD / YYYY | Suspension/Bar Duration: | Suspension/Bar capacity affected: *(General Securities Principal, Financial & Operations Principal, Options Trading, etc.)*

15. If requalification by exam/ retraining was a condition of the sanction: ▶ | Is requalification/retraining time-related? ☐ Yes ☐ No | If Yes, length of time given to requalify/retrain: *(If No, provide details in Item 19)* | Type of Exam required for requalification: | Has condition been satisfied? ☐ Yes ☐ No

16. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation: *(Fill in amount on appropriate line)* ▶			Date Paid: MM / DD / YYYY
	Penalty/Fine:	$	Date Paid: / /
	Restitution:	$	Date Paid: / /
	Disgorgement:	$	Date Paid: / /
	Other:	$	Date Paid: / /
17. Was the control affiliate named in Part I required to pay any part of the monetary items disclosed in 16? ☐ Yes ☐ No *(If "yes", fill in amount on appropriate line)* ▶			Date Paid: MM / DD / YYYY
	Penalty/Fine:	$	Date Paid: / /
	Restitution:	$	Date Paid: / /
	Disgorgement:	$	Date Paid: / /
	Other:	$	Date Paid: / /

18. Was payment of all or any part of a monetary award, penalty or fine waived? ☐ Yes ☐ No If yes, provide details of Waiver in 19 below.

19. Provide a summary of details related to the action status and (or) disposition and include relevant terms, conditions, and dates. Use reverse side of this sheet for additional comments if necessary.)

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CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (BD)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL *OR* ☐ AMENDED response used to report details for affirmative responses to ***Item 11H*** of Form BD;

Check ☑ item(s) being responded to:

11H(1) Has any domestic or foreign court:

- ☐ (a) in the past ten years, enjoined the applicant or a control affiliate in connection with any investment-related activity?
- ☐ (b) ever found that the applicant or a control affiliate was involved in a violation of investment-related statutes or regulations?
- ☐ (c) ever dismissed, pursuant to a settlement agreement, an investment-related civil action brought against you by a state or foreign financial regulatory authority?

11H(2) ☐ Is the applicant or a control affiliate now the subject of any civil proceeding that could result in a "yes" answer to any part of 11H?

If the control affiliate is an individual registered through the CRD, complete only Part I. The control affiliate must submit details for this event on an appropriate DRP (U-4). If the control affiliate is not an individual registered through the CRD, provide complete answers for appropriate items on this DRP. The completion of this DRP does not relieve the control affiliate of its obligation to update its CRD records. If more than one control affiliate, complete a separate DRP for each.

One event may result in more than one affirmative answer to the above items. Use only one DRP to report details related to the same event. Unrelated civil judicial actions must be reported on separate DRPs.

PART I

NAME OF APPLICANT	APPLICANT CRD NUMBER
NAME OF CONTROL AFFILIATE (if applicable)	CONTROL AFFILIATE CRD NUMBER

PART II

1. Court Action initiated by: *(Name the Regulator, foreign financial regulatory authority, SRO, commodities exchange, Agency, Firm, Private Plaintiff, etc.)*

2. Court Action Type: *(Temporary Restraining Order, Mandatory Injunction, Prohibitive Injunction, etc.)*

3. Filing Date of Court Action: MM / DD / YYYY

4. Product Type(s):

5. Court formal action was brought in: *(Name of Federal, Military, State or Foreign Court)*

6. Location of Court: *(City or County and State or Country)*

7. Docket / Case Number:

8. Control Affiliate Employing Firm when events occurred (if applicable):

9. Describe Allegations relating to this court action:

10. Is action currently: *(check one)* ☐ Pending ☐ On Appeal ☐ Final

11. If pending, date notice was served: MM / DD / YYYY

12. If on appeal, action appealed to: *(provide name of court)*

13. If on appeal, date filed: MM / DD / YYYY

IF FINAL OR ON APPEAL, COMPLETE ALL ITEMS BELOW. FOR PENDING ACTIONS, COMPLETE ITEM 21 ONLY

14. How was the matter resolved? *(Settlement, Consent, Litigation, etc.)*

15. Resolution Date: MM / DD / YYYY

16. Sanctions: *(Suspension, Censure, etc.)*

17. If Suspended, Enjoined or Barred: ▶ Is suspension/injunction/bar of a fixed duration? ☐ Yes ☐ No (If No, provide details in Item 21) | Suspension/Injunction/Bar Start Date: MM / DD / YYYY | Suspension/ Injunction/Bar Duration: | Suspension/Injunction/Bar capacity affected: *(General Securities Principal, Financial & Operations Principal, Options Trading, etc.)*

18. If requalification by exam is/was a condition of the disposition: ▶ Is requalification time-related? ☐ Yes ☐ No | If Yes, length of time given to requalify: *(If No, provide details in Item 21)* | Type of exam required for requalification: | Has condition been satisfied? ☐ Yes ☐ No

19. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation: *(Fill in amount on appropriate line)* ▶

			MM / DD / YYYY
Penalty/Fine:	$	Date Paid:	/ /
Restitution:	$	Date Paid:	/ /
Disgorgement:	$	Date Paid:	/ /
Other:	$	Date Paid:	/ /

20. Was the control affiliate named in Part I required to pay any part of the monetary items disclosed in 19? ☐ Yes ☐ No *(If "yes", fill in amount on appropriate line)* ▶

			MM / DD / YYYY
Penalty/Fine:	$	Date Paid:	/ /
Restitution:	$	Date Paid:	/ /
Disgorgement:	$	Date Paid:	/ /
Other:	$	Date Paid:	/ /

21. Provide a brief [illegible]

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FINANCIAL DISCLOSURE REPORTING PAGE 1 (BD)
(Bankruptcy and SIPC)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to ***Item 11I*** of Form BD;

Check ☑ item(s) being responded to:

11I In the past ten years has the applicant or a control affiliate of the applicant ever been a securities firm or a control affiliate of a securities firm that:

☐(1) has been the subject of a bankruptcy petition?
(Please fill out SECTION I below.)

☐(2) has had a trustee appointed or a direct payment procedure initiated under the Securities Investor Protection Act?
(Please fill out SECTION II below.)

If the control affiliate is an individual registered through the CRD, complete only Part I. The control affiliate must submit details for this event on an appropriate DRP (U-4). If the control affiliate is not an individual registered through the CRD, provide complete answers for appropriate items on this DRP. The completion of this DRP does not relieve the control affiliate of its obligation to update its CRD records. If more than one control affiliate, complete a separate DRP for each one.

Disclose details to only one item of 11I on this DRP. Complete Section I and/or Section II as well as Item 18 to complete this DRP.

PART I

NAME OF APPLICANT	APPLICANT CRD NUMBER
NAME OF CONTROL AFFILIATE (if applicable)	CONTROL AFFILIATE CRD NUMBER

PART II

SECTION I — If in the past 10 years, the applicant or control affiliate has ever been a securities firm or a control affiliate of a securities firm that has been the subject of a bankruptcy petition:

1. Action Type: *(Compromise, Bankruptcy, Declaration, etc.)*		2. Action Date: MM / DD / YYYY
3. Securities firm name when events occured:		4. Position, Title, or Relationship (if applicable):
5. Court: *(Name of Federal, State, or Foreign Court)*		6. Location of Court: *(City or County and State or Country)*
7. Docket / Case Number:	8. Chapter Number: *(If Federal Bankruptcy Filing)*	9. Is action currently pending? ☐ Yes ☐ No
10. Disposition Type: *(Discharged, Released, Dismissed, etc.)*		11. Disposition Date: MM / DD / YYYY
12. Provide brief summary of events leading to action. If not dismissed or closed, explain: (Use reverse side of this sheet for additional comments if necessary.)		

SECTION II — If in the past 10 years, the applicant or control affiliate has ever been a securities firm or a control affiliate of a securities firm that has had a trustee appointed or a direct payment procedure initiated under the Securities Investor Protection Act:

1. Action Type: *(Compromise, Bankruptcy, Declaration etc.)*		2. Action Date: MM / DD / YYYY
3. Securities firm name when events occured:		4. Position, Title, or Relationship (if applicable):
5. Court: *(Name of Federal, State, or Foreign Court)*		6. Location of Court: *(City or County and State or Country)*
7. Docket / Case Number:	8. Chapter Number: *(If Federal Bankruptcy Filing)*	9. Is action currently pending? ☐ Yes ☐ No
10. Disposition Type: *(Discharged, Released, Dismissed, etc.)*		11. Disposition Date: MM / DD / YYYY
12. Provide brief summary of events leading to action: (Use reverse side of this sheet for additional comments if necessary.)		

If a SIPA trustee was appointed, complete Items 13, 16 and 17. If a direct payment procedure was begun, complete Items 13, 14 and 15.

13. Currently Open? ☐ Yes ☐ No	14. The Amount Paid Or Agreed To Be Paid By Applicant or Control Affiliate: $	15. Date Initiated or Filed: MM / DD / YYYY
16. Trustee Name:		17. Trustee Appointment Date: MM / DD / YYYY

18. Please provide details [illegible]

Rev. 11/94

FINANCIAL DISCLOSURE REPORTING PAGE 2 (BD)

(Bonding Payout and Liens)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to ***Items 11J or 11K*** of Form BD;

Check ☑ item(s) being responded to:

11J ❑ Has a bonding company ever denied, paid out on, or revoked a bond for the applicant?
(Please fill out SECTION I below)

11K ❑ Does the applicant have any unsatisfied judgments or liens against it?
(Please fill out SECTION II below)

If multiple, unrelated events result in the same affirmative answer, details must be provided on separate DRPs.

NAME OF APPLICANT	APPLICANT CRD NUMBER

SECTION I — If a bonding company ever denied, paid out on, or revoked a bond for the applicant:

1. Firm Name: *(Policyholder)*

2. Bonding Company Name:

3. Disposition Type: *(Denial, Revocation, Payout)*

4. Disposition Date: MM / DD / YYYY

5. If disposition resulted in Payout: ▶ Payout Amount: $ Date Paid: MM / DD / YYYY

6. Summarize details of circumstances leading to the necessity of the bonding company action:

SECTION II — If the applicant has an unsatisfied judgment or lien: (Disclose details for only one judgment or lien per DRP.) When the judgment/lien has been satisfied or otherwise disposed of, amend the Form BD and this section to report the outcome.

1. Judgment / Lien Amount: $

2. Judgment or Lien Holder:

3. Judgment / Lien Type: *(Tax, Civil, Default, Liquidated Damages, etc.)*

4. Date Filed: MM / DD / YYYY

5. Is Judgment/Lien Outstanding? ☐ Yes ☐ No — If No, provide status date: MM / DD / YYYY — If No, how was matter resolved? *(Released, Discharged, Removed, Paid)*

6. Court: *(Name of Federal, State or Foreign Court)*

7. Location of Court: *(City or County and State or Country)*

8. Docket / Case Number:

9. Provide a brief summary of events leading to the action and any payment schedule details including current status (if applicable). (Use reverse side of this sheet for additional comments if necessary.)

Rev. 10/94

Schedule A of FORM BD

DIRECT OWNERS AND EXECUTIVE OFFICERS

(Answer for Form BD Item 3)

(REV. 11/94)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

1. Use Schedule A only in new applications to provide information on the **direct** owners and executive officers of the applicant. Use Schedule B in new applications to provide information on **indirect** owners. File all amendments on Schedule C. **Complete each column.**

2. List below the names of:

   (a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer, Director, and individuals with similar status or functions;

   (b) in the case of an applicant that is a corporation, each shareholder that directly owns 5% or more of a class of a voting security of the applicant, unless the applicant is a public reporting company (a company subject to Sections 12 or 15(d) of the Securities Exchange Act of 1934);

   Direct owners include any person that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of a voting security of the applicant. For purposes of this Schedule, a person beneficially owns any securities (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant or right to purchase the security.

   (c) in the case of an applicant that is a partnership, **all** general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of the partnership's capital; and

   (d) in the case of a trust that directly owns 5% or more of a class of a voting security of the applicant, or that has the right to receive upon dissolution, or has contributed, 5% or more of the applicant's capital, the trust and **each trustee.**

3. Are there any indirect owners of the applicant required to be reported on Schedule B? ☐ Yes ☐ No

4. Complete the "Status" column by entering board/management titles; status as partner, trustee, sole proprietor, or shareholder; and for shareholders, the class of securities owned (if more than one is issued).

5. (a) In the "DE/FE/I" column, enter "DE" if the owner is a domestic entity, or enter "FE" if owner is an entity incorporated or domiciled in a foreign country, or enter "I" if the owner is an individual.

   (b) In the "Control Person" column, enter "Yes" if person has "control" as defined in the instructions to this form, and enter "No" if the person does not have control. Note that under this definition most executive officers and all 25% owners, general partners, and trustees would be "control persons".

   (c) In the "PR" column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934.

6. Ownership codes are: NA – less than 5% A – 5% but less than 10% B – 10% but less than 25% C – 25% but less than 50% D – 50% but less than 75% E – 75% or more

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Date Title or Status Acquired MM	Date Title or Status Acquired YYYY	Title or Status	Ownership Code	Control Person	PR	CRD No. If None: S.S. No., IRS Tax No. or Employer ID.	Official Use Only

Schedule B of FORM BD

INDIRECT OWNERS

(Answer for Form BD Item 3)
(REV. 11/94)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

1. Use Schedule B only in new applications to provide information on the **indirect** owners of the applicant. Use Schedule A in new applications to provide information on **direct** owners. File all amendments on Schedule C. **Complete each column.**

2. With respect to each owner listed on Schedule A, (except individual owners), list below:
   (a) in the case of an owner that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25% or more of a class of a voting security of that corporation;
   For purposes of this Schedule, a person beneficially owns any securities (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant or right to purchase the security.
   (b) in the case of an owner that is a partnership, **all** general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 25% or more of the partnership's capital; and
   (c) in the case of an owner that is a trust, the trust and each trustee.

3. Continue up the chain of ownership listing all 25% owners at each level. Once a public reporting company (a company subject to Sections 12 or 15(d) of the Securities Exchange Act of 1934) is reached, no ownership information further up the chain of ownership need be given.

4. Complete the "Status" column by entering status as partner, trustee, shareholder, etc., and if shareholder, class of securities owned (if more than one is issued).

5. (a) In the "DE/FE/I" column, enter "DE" if the owner is a domestic entity, or enter "FE" if owner is an entity incorporated or domiciled in a foreign country, or enter "I" if the owner is an individual.
   (b) In the "Control Person" column, enter "Yes" if person has "control" as defined in the instructions to this form, and enter "No" if the person does not have control. Note that under this definition most executive officers and all 25% owners, general partners, and trustees would be "control persons".
   (c) In the "PR" column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934.

6. Ownership codes are: C – 25% but less than 50% D – 50% but less than 75% E – 75% or more F – Other General Partners

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Entity in Which Interest is Owned	Date Title or Status Acquired MM	Date Title or Status Acquired YYYY	Status	Ownership Code	Control Person PR	Control Person	CRD No. if None: S.S. No., IRS Tax No. or Employer ID.	Official Use Only

Schedule C of FORM BD

AMENDMENTS TO SCHEDULES A & B

(Amendments to answers for Form BD Item 3) (REV. 11/94)

OFFICIAL USE

Applicant Name: _____

Date: _____ Firm CRD No.: _____

1. This Schedule C is used to amend Schedules A and B of Form BD. Refer to those schdeules for specific instructions for completing this Schedule C. **Complete each column.** File with a completed Execution Page (Page 1).

2. In the 'Type of Amd.' column, indicate "A" (addition), "D" (deletion), or "C" (change in information about the same person).

3. Ownership codes are: NA – less than 5% A – 5% but less than 10% B – 10% but less than 25% C – 25% but less than 50% D – 50% but less than 75% E – 75% or more F – Other General Partners

4. **List below all changes to Schedule A: (DIRECT OWNERS AND EXECUTIVE OFFICERS)**

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Type of Amd.	Date Title or Status Acquired MM	Date Title or Status Acquired YYYY	Title or Status	Ownership Code	Control Person PR	Control Person	CRD No. If None: S.S. No., IRS Tax No. or Employer ID.	Official Use Only

5. **List below all changes to Schedule B: (INDIRECT OWNERS)**

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Type of Amd.	Entity in Which Interest is Owned	Date Title or Status Acquired MM	Date Title or Status Acquired YYYY	Status	Ownership Code	Control Person PR	Control Person	CRD No. If None: S.S. No., IRS Tax No. or Employer ID.	Official Use Only

Schedule D of FORM BD

CONTINUATION SHEET
Page 1
(FEB. 1994)

OFFICIAL USE (OFFICIAL USE ONLY)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

Use this Schedule D Page 1 to report details for items listed below. Only report new information or changes/updates to previously submitted details. Do not repeat previously submitted information.

This is an ☐ INITIAL ☐ AMENDED detail filing for the Form BD items checked below:

SECTION I *Other Business Names*

(Check if applicable) ☐ Item 1C(2)

List each of the "other" names and the jurisdiction(s) in which they are used.

1. Name	JURISDICTION CODE	2. Name	JURISDICTION CODE
3. Name	JURISDICTION CODE	4. Name	JURISDICTION CODE

SECTION II *Other Business*

(Check one) ☐ Item 12Z ☐ Item 13B

Applicant must complete a separate Schedule D Page 1 for each affirmative response in this section.

Briefly describe any other business (ITEM 12Z); or any other non-securities business (ITEM 13B). Use only the space provided.

SECTION III *Successions*

(Check if applicable) ☐ Item 5

Date of Succession MM / DD / YYYY	Name of Predecessor	
IRS Employer Identification Number	Firm CRD Number (if any)	SEC File Number (if any)

Briefly describe details of the succession. Use only the space provided.

SECTION IV *Introducing and Clearing Arrangements / Control Persons / Financings*

(Check one) ☐ Item 7 ☐ Item 8A ☐ Item 8B ☐ Item 8C ☐ Item 9A ☐ Item 9B

Applicant must complete a separate Schedule D Page 1 for each affirmative response in this section including any multiple responses to any Item. Complete the "Effective Date" box with the Month, Day and Year that the arrangement agreement, or affiliation became effective. Complete the "Termination Date" box with the Month, Day and Year that the arrangement, agreement, or affiliation was terminated.

Firm or Organization Name	CRD Number (if any)
Business Address (Street, City, State/Country, Zip+4/Postal Code)	
Individual Name (if applicable) (Last, First, Middle)	CRD Number (if any)
Business Address (if applicable) (Street, City, State/Country, Zip+4/Postal Code)	
Effective Date MM / DD / YYYY	Termination Date MM / DD / YYYY

Briefly describe the nature of reference or arrangement (ITEM 7 or ITEM 8); the nature of the control or agreement (ITEM 9A); or the method and amount of financing (ITEM 9B). Use only the space provided.

Schedule D of FORM BD

CONTINUATION SHEET
Page 2
(REV. 11/94)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

Use this Schedule D Page 2 to report details for items listed below. Only report new information or changes/updates to previously submitted details. Do not repeat previously submitted information. Supply details for all partnerships, corporations, organizations, institutions and individuals necessary to answer each item completely. Use additional copies of Schedule D Page 2 if necessary.

Complete the "Effective Date" field with the Month, Day and Year that the affiliation became effective. Complete the "Termination Date" field with the Month, Day and Year that the affiliation was terminated.

This is an ☐ INITIAL ☐ AMENDED detail filing for the Form BD items checked below:

☐ 10A. Directly or indirectly, does applicant control, is applicant controlled by, or is applicant under common control with, any partnership, corporation, or other organization that is engaged in the securities or investment advisory business?

☐ 10B. Directly or indirectly, is applicant controlled by any bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings bank or association, credit union, or foreign bank?

SECTION I: *Complete this section for affirmative responses to ITEM 10A only.*

The details supplied relate to:

1 Partnership, Corporation, or Organization Name | CRD Number (if any)

Effective Date MM / DD / YYYY | Termination Date MM / DD / YYYY

(check only one)

This Partnership, Corporation, or Organization ☐ controls, ☐ is controlled by, ☐ is under common control with applicant.

Business Address *(Street, City, State/Country, Zip+4/Postal Code)*

Is Partnership, Corporation or Organization a foreign entity? ☐ Yes ☐ No	If Yes, provide country of domicile or incorporation:	Check "Yes" or "No" for activities of this partnership, corporation, or organization: ▶ Securities Activities: ☐ Yes ☐ No	Investment Advisory Activities: ☐ Yes ☐ No

2 Partnership, Corporation, or Organization Name | CRD Number (if any)

Effective Date MM / DD / YYYY | Termination Date MM / DD / YYYY

(check only one)

This Partnership, Corporation, or Organization ☐ controls, ☐ is controlled by, ☐ is under common control with applicant.

Business Address *(Street, City, State/Country, Zip+4/Postal Code)*

Is Partnership, Corporation or Organization a foreign entity? ☐ Yes ☐ No	If Yes, provide country of domicile or incorporation:	Check "Yes" or "No" for activities of this partnership, corporation, or organization: ▶ Securities Activities: ☐ Yes ☐ No	Investment Advisory Activities: ☐ Yes ☐ No

3 Partnership, Corporation, or Organization Name | CRD Number (if any)

Effective Date MM / DD / YYYY | Termination Date MM / DD / YYYY

(check only one)

This Partnership, Corporation, or Organization ☐ controls, ☐ is controlled by, ☐ is under common control with applicant.

Business Address *(Street, City, State/Country, Zip+4/Postal Code)*

Is Partnership, Corporation or Organization a foreign entity? ☐ Yes ☐ No	If Yes, provide country of domicile or incorporation:	Check "Yes" or "No" for activities of this partnership, corporation, or organization: ▶ Securities Activities: ☐ Yes ☐ No	Investment Advisory Activities: ☐ Yes ☐ No

If applicant has more than 3 organizations to report, complete additional Schedule D Page 2s.

Schedule D of FORM BD

CONTINUATION SHEET
Page 2 (continued)
(REV. 11/94)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

SECTION II ***Complete this section for affirmative responses to ITEM 10B only.***

Provide the details for each organization or institution that controls the applicant, including each organization or institution in the applicant's chain of ownership. The details supplied relate to:

1	Financial Institution Name	CRD Number (if applicable)
Effective Date MM / DD / YYYY	Termination Date MM / DD / YYYY	
Institution Type (i.e., bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings association, credit union, or foreign bank)		
Business Address (Street, City, State/Country, Zip+4/Postal Code)	If foreign, country of domicile or incorporation	

2	Financial Institution Name	CRD Number (if applicable)
Effective Date MM / DD / YYYY	Termination Date MM / DD / YYYY	
Institution Type (i.e., bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings association, credit union, or foreign bank)		
Business Address (Street, City, State/Country, Zip+4/Postal Code)	If foreign, country of domicile or incorporation	

3	Financial Institution Name	CRD Number (if applicable)
Effective Date MM / DD / YYYY	Termination Date MM / DD / YYYY	
Institution Type (i.e., bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings association, credit union, or foreign bank)		
Business Address (Street, City, State/Country, Zip+4/Postal Code)	If foreign, country of domicile or incorporation	

4	Financial Institution Name	CRD Number (if applicable)
Effective Date MM / DD / YYYY	Termination Date MM / DD / YYYY	
Institution Type (i.e., bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings association, credit union, or foreign bank)		
Business Address (Street, City, State/Country, Zip+4/Postal Code)	If foreign, country of domicile or incorporation	

If applicant has more than 4 organizations/institutions to report, complete additional Schedule D Page 2s.

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Schedule E of FORM BD

OFFICIAL USE

Applicant Name: _____

Date: _____ Firm CRD No.: _____

INSTRUCTIONS

General: Use this schedule to report branch offices or other business locations of the applicant.
Repeat Items 1-11 for each branch office or other business location. Each item must be completed unless otherwise noted.
Use additional copies of this schedule as necessary.

Specific:

Item 1. Specify only one box. Check "Add" when a branch office or other business location is opened and you are filing the initial notice, "Delete" when a branch office is closed, and "Amendment" to indicate any other change to previously filed information.

Item 2. CRD will assign this branch number when you "Add" a branch office or other business location as discussed in Item 1 above. If known, complete this item for all "Deletes" and "Amendments."

Item 3. Complete this item for all entries. A physical location must be included; post office box designations, alone, are not sufficient.

Item 4. Complete this item only when the applicant changes the address of an existing branch office or other business location.

Item 5. If the branch office or other business location occupies or shares space on premises within a bank, savings bank or association, or credit union, enter the name of the institution in the space provided.

Item 6. Complete this item for all entries. If applicable, provide the supervisor's name as it appears on the most recent Form U-4 filing.

Item 7. If applicable, provide the CRD number for the branch office supervisor named in Item 4.

Item 8. Complete this item for all entries. Provide the date that the branch office was opened (ADD), closed (DELETE), or the effective date of the change (AMENDMENT).

Item 9. Check "Yes" or "No" to denote whether location will be an Office of Supervisory Jurisdiction (OSJ) as defined in the NASD Rules of Fair Practice, Article III Section 27.

Item 10. Check "Yes" or "No" to denote whether the location is a business location that will operate pursuant to a written agreement or contract (other than an insurance agency agreement) with the main office and any one or more of the following will apply: the location (A) assumes liability for its own expenses or has its expenses paid by a party other than the applicant; (B) has primary responsibility for decisions relating to the employment and remuneration of its registered representatives; (C) deems 5% or more of its total registered representatives to be "independent contractors" for tax purposes; or (D) engages in separate market making and/or underwriting activities.

Item 11. Check "Yes" or "No" to denote whether this location is a jurisdiction branch registration only.

1. (Check only one box.)
☐ Add ☐ Delete ☐ Amendment

2. CRD Branch Number _____.

3. _____
Street

_____
P O Box (if applicable), Suite, Floor

_____
City, State/Country, Zip Code + 4/Postal Code

If you are changing the address enter the new address in Item 4.

4. _____
Street

_____
P O Box (if applicable), Suite, Floor

_____
City, State/Country, Zip Code + 4/Postal Code

5. _____
Institution Name (if applicable)

6. _____
Supervisor Name (Last, First, Middle)

7. _____
CRD Number of Supervisor

8. Effective Date: MM DD YYYY
_____/_____/_____

9. OSJ
☐ Yes ☐ No

10. ☐ Yes ☐ No
If yes, indicate each Item 10 subset that applies:
☐ A ☐ B ☐ C ☐ D

11. Jurisdiction Only
☐ Yes ☐ No

[FR Doc. 95–1359 Filed 1–17–95; 9:36 am]
BILLING CODE 8010–01–C

Federal Register

Thursday
January 19, 1995

Part X

The President

Proclamation 6766—Year of the Grandparent, 1995

Federal Register
Vol. 60, No. 12
Thursday, January 19, 1995

Presidential Documents

Title 3—

The President

Proclamation 6766 of January 17, 1995

Year of the Grandparent, 1995

By The President of the United States of America

A Proclamation

The American family has undergone dramatic changes in the past few decades. Families have felt the effects of a rising divorce rate, declining birth rate, and an increasingly fast-paced and complicated economy. At the same time, Americans are living longer, retiring younger, and taking advantage of more leisure hours than ever before. Today, approximately 60 million grandparents in the United States look forward to spending time with their families and to enjoying their much-deserved respite.

Desipite the many changes, grandparents remain an important source of knowledge and stability in American families. Grandparents help us understand the past and encourage us to hope for the future. They preserve and strengthen the values we hold most dear—compassion and generosity, responsibility and tradition. These relationships between generations have always been central to the happiness and well-being of young and old alike.

Households made up of several generations have increased by more than 50 percent in the past 25 years, and today, some 3.4 million children live in a household headed by a grandparent. For parents struggling with issues including substance abuse or teenage pregnancy, divorce or separation, grandparents can be invaluable resources of compassion. For children who are abused or neglected, grandparents can be lifesavers. All too often, grandparents embrace these tremendous responsiblities because no one else is able. But they also do so out of love, out of the wisdom that comes from a lifetime spent learning the importance of family. For all they teach us and for all they give, we pledge this year to honor grandparents everywhere.

The Congress, by Public Law 103–368, has designated 1995 as the ''Year of the Grandparent'' and has authorized and requested the President to issue a proclamation in observance of this year.

NOW, THEREFORE, I, WILLIAM J. CLINTON, Presdient of the United States of America, do hereby proclaim 1995 as the Year of the Grandparent. I invite Federal officials, local government, advocacy groups, and families across the United States to join in commemorating the many contributions that grandparents make and in observing this year with appropriate ceremonies, programs, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of January, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of American the two hundred and nineteenth.

[FR Doc. 95–1583
Filed 1–18–95; 9:25 am]
Billing code 3195–01–P

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Federal Register

Vol. 60, No. 12

Thursday, January 19, 1995

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